



R1 - Visitors and Residents

POLICY: VISITORS AND RESIDENTS

REF: R1

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PURPOSE:

To define clearly the various ways in which persons may be permitted to stay in Bermuda.

STATEMENT:

Visitors **NEW**

In law, a visitor may remain in Bermuda no more than six months. In order for a visitor to remain in Bermuda longer than six months, he or she must obtain the specific permission of the Minister to remain in Bermuda as a resident.

Generally, on arrival at the airport, a visitor is given leave to stay in Bermuda for up to 21 days. This is because most North American visitors spend only four or five days in Bermuda, whereas visitors from further afield generally stay no more than about three weeks. Where a visitor wishes to stay longer than the initial 21 days, he or she must make an appointment with an Immigration Inspector at the Department of Immigration Headquarters. However, clearly, the Department of Immigration will liaise with the Department of Tourism so that Immigration's policies work in synchronisation with theirs. There is no fee for extensions of a stay of up to three months in total. For stays beyond three months there is a fee (\$25.00 in 2002: fees are revised from time-to-time) for each extension.

Extensions are normally given for no more than a total stay of eight weeks. In very exceptional circumstances, extensions may be given for up to five months.

When a visitor leaves Bermuda his or her permission to remain as a visitor ceases at once. For a visitor who returns to Bermuda within six months of his or her last visit, the length of his or her stay will be added to the duration of his or her previous stay. If in this way, a visitor accumulates a total of six months or more in successive visits, he or she will be allowed to land in Bermuda but will not be granted any extensions of stay. He or she will be limited to a stay of no more than 21 days.

A visitor who overstays his or her permission to remain in Bermuda commits an offence against the Bermuda Immigration and Protection Act 1956 and is liable to be placed on the stop list after his or her departure.

Visiting Yachts and their Crews

H.M. Customs may give permission for a vessel to remain in Bermuda waters for an extended period. Yachtsmen are advised not to confuse that permission with the separate and specific permission required, from the Department of Immigrations, by each individual to remain in Bermuda beyond the usual 21 days.

During the Hurricane Season, from 1 June to 30 November, visiting yachtsmen may be given permission to stay in Bermuda for up to five months so as to provide safe haven. This does not

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mean that yachtsmen will not be allowed to stay up to five months at other times of the year, but it would not be virtually automatic on safe-haven grounds.

A yachtsman wishing to avail himself or herself of this privilege must submit, to the Department of Immigration, proof:

- of citizenship
- of the means to repatriate himself or herself by air, should the need arise
- of health insurance
- of sufficient funds to support himself or herself while in Bermuda
- in writing, that he or she will not seek or take up employment in Bermuda

Visitors on Work Permits

A person who is employed on a periodic work permit or on a temporary work permit is considered to be a visitor and not a resident.

A periodic permit may be valid for any period up to one year. It allows the person to enter Bermuda any number of times during that period of validity. If a person who would otherwise be accommodated with a periodic work permit is to spend more than six months in Bermuda at any one time, the employer should apply for a standard work permit.

A temporary work permit allows a person to work in Bermuda for up to three months continuously. A temporary permit can only be extended once to bring the person up to his or her maximum permitted stay of six months in Bermuda. After that the person must either leave Bermuda or the employer should apply for a standard work permit.

Permission to Reside on an Annual Basis

Permission to reside on an annual basis is a grant by the Minister of Labour, Home Affairs and Public Safety under the provisions of subsection (1) of section 32 of the Bermuda Immigration and Protection Act 1956.

Permission to reside on an annual basis gives a person the right to enter Bermuda, as a resident, on the basis of a single ticket at Bermuda's ports on any number of occasions during the period of its validity.

It is important to note that the person to whom permission to reside is granted is prohibited from engaging in employment in Bermuda while the permission lasts.

A non-Bermudian wishing to apply for permission to reside on an annual basis must submit the following documents:

- a completed initial immigration questionnaire form (IQF1);
- to satisfy the requirements of the Chief Medical Officer, a medical certificate of good health and a full size chest X-ray, to demonstrate that he or she is in general good health and free of any contagious diseases;

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- two references (preferably from Bermudians) to confirm that he or she is of good character. The referees should be of good standing in their community and have known the applicant for at least three years. A referee must not be the lawyer, agent or relative of the applicant;
- a police certificate from the applicant's country of origin, or country in which the applicant has resided during the past twelve (12) months, certifying that no civil or criminal convictions have been recorded against the applicant or detailing any/all convictions that have been recorded.
- a bank statement to satisfy the Department of Immigration that he or she has sufficient funds available to live comfortably in Bermuda;
- evidence of valid health insurance to prove that, given the high cost of medical care, he or she is adequately covered should the need for medical treatment arise;
- two (2) passport type photographs; and
- a valid passport.

Under the Government Fees Act 1965, the Government Fees Amendment Regulations 2002, a fee is chargeable (current fee (2002: fees are revised from time-to-time): \$121.00) whether the permission is being granted for the first time or is a renewal of an earlier grant. However, if the application is refused, the fee is refundable.

To apply for renewal of permission to reside on an annual basis, a person must submit the following documents with his or her letter of application and the appropriate fee:

- a bank statement; and
- evidence of valid health insurance.

Residential Certificates

A Residential Certificate is issued by the Minister of Labour, Home Affairs and Public Safety under subsection 32(5) of the Bermuda Immigration and Protection Act 1956 which states:

“Where a person is granted permission to reside in Bermuda under this section and that permission is unlimited in duration the Minister may grant that person a residential certificate setting out that that person has such permission and resides in Bermuda.

Provided that if the permission of a person holding a residential certificate to reside in Bermuda is revoked, then that person shall surrender to the Minister that residential certificate”

A Residential Certificate gives a person the right to enter and live indefinitely in Bermuda. However, such a person is prohibited from taking employment in Bermuda or elsewhere, as holders of Residential Certificates are required to be retired. Please see below for the definition of the term “retired” in this context.

Eligibility

There are three groups of people who are eligible to apply for Residential Certificates:

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- Group A Those who own residential property in Bermuda. The term “own” includes the leasehold of condominiums as well as the freehold of houses;
- Group B Those who have been gainfully employed in Bermuda for at least five years;
- Group C Those married couples of whom one partner qualifies in one of the above Groups

In order to be eligible to apply for a Residential Certificate, the applicant must:

In Groups A and B

- be retired within the meaning defined below;
- have no more than two dependent children on arrival in Bermuda to take up residence;
- be of substantial means and of good character.

In Group C

- be a married couple one of whose members qualifies under Group A or Group B; and
- be living together as husband and wife.

A person who qualifies under Group A or Group B will be granted a personal Residential Certificate. A couple who qualifies in Group C will be granted two joint Residential Certificates issued in the names of both spouses.

Definitions

The term “retired” refers to persons who have reached a minimum age of fifty (50) years and means the applicant must not be “engaged in gainful occupation” as defined in section 57 of the Bermuda Immigration and Protection Act 1956. For the sake of consistency, the definition of “gainful occupation” in that section of the Act is also used to judge activities abroad to determine whether the applicant is employed overseas.

The term “dependent children” includes young adults who are at college, university or some other tertiary educational establishment. Dependent children must not be younger than sixteen (16) years of age. This restriction is designed to limit the impact of such households on Bermuda’s infrastructure.

“Substantial means” is not defined by a single monetary figure. Funds available to the applicant should be more than are needed to sustain his or her household and lifestyle in Bermuda and overseas without the need for employment. Each case is treated on its own merits.

Method of Application

In general, a non-Bermudian wishing to apply for a Residential Certificate must submit, to the Chief Immigration Officer, the following documentation:

- a completed application form;
- a completed immigration questionnaire form (IQF1);
- to satisfy the requirements of the Chief Medical Officer, a medical certificate of good health and a full-size chest X-ray, to demonstrate that he or she is in general good health and free of contagious diseases;

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- two character references, preferably from Bermudians, but in any case from people of good standing in their communities who have known the applicant for at least three years. A referee must not be the lawyer, agent or relative of the applicant;
- a bank reference attesting to the applicant's financial soundness and possession of means; and
- two (2) passport-size photographs of the applicant.

All applicants must submit this documentation, except that both a Group A applicant who has acquired his or her property within two years of the application for a Residential Certificate, and a Group B applicant who has recently been employed in Bermuda, may omit the X-ray and character references.

A non-Bermudian in Group B who has completed an immigration questionnaire form within three years of his or her application for a Residential Certificate need not do so again.

With respect to a married couple applying for joint Residential Certificates, both marriage partners are required to submit all the documentation listed above, as appropriate.

Fees

There is no fee for the grant of a Residential Certificate to a Group A applicant. Group B applicants, however, must pay the appropriate fee (\$896.00 in 2002: fees are revised from time-to-time) set out in Government Fees Regulations. A pair of joint Residential Certificates attracts the appropriate fees for two residential certificates.

A miniature or wallet-sized certificate is available on application. The miniature certificate facilitates re-entry into Bermuda for Residential Certificate holders. A fee (\$118.00 in 2002: fees are revised from time-to-time) is charged for the issuance of such a certificate.

Revocation

The Minister may revoke a Residential Certificate if the holder's circumstances change so that the basis of the grant is removed — for example, if a person qualified on the basis of owning residential property and then sells the property.

The Minister may also revoke the Residential Certificate at any time under section 34 of the Bermuda Immigration and Protection Act, 1956. Without prejudice to the generality of the Minister's rights under the Act, examples of occurrences, which could lead to the revocation of a Residential Certificate, are as follows:

- the Residential Certificate was obtained by fraud, false pretences or concealment of a material fact; or
- the holder is convicted of a crime, whether in Bermuda or abroad, which resulted (or would have resulted if convicted in Bermuda) in a sentence of a term of imprisonment of two years or more whether or not the sentence was served in full or suspended; or
- the holder resides outside Bermuda for two years or more, without seeking leave from the Minister to do so prior to his or her departure.

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Automatic Revocation of Joint Residential Certificates

Where one party to the marriage already possesses a Residential Certificate, joint Residential Certificates will not be issued to the couple until that existing certificate has been surrendered.

Joint Residential Certificates are granted under the condition that the couple remain lawfully married and living together as husband and wife. Where the couple separate, divorce or otherwise become estranged, the joint Residential Certificates are revoked automatically and should be returned to the Department of Immigration.

If the marriage breaks up, the one who qualifies in his or her own right under Group A or Group B may apply for a new, personal certificate provided the joint certificates accompany the application if they have not already been surrendered.

Restriction on Letting Property

Residential Certificate holders acquire their ability to live in Bermuda on the assumption that they wish to make Bermuda their main place of residence. It would be incompatible with this notion to allow holders to let their residential property for extended periods. However, a Residential Certificate holder may be permitted to let his or her property for short periods amounting in aggregate to no more than six months in any twelve-month period. Permission to let a property will not normally be given if the Residential Certificate holder intends to reside in Bermuda during the rental period.

General Comments

A Residential Certificate is issued to an individual, and extends no right to the holder's dependants to enter or reside in Bermuda. Dependants must obtain permission in their own right to enter and reside. However, if they do not already have the Minister's written permission to reside in Bermuda, the spouse and dependent child of a Residential Certificate holder are allowed to purchase a multiple re-entry permit valid for a year at a time. A person who enters Bermuda on a Multiple Re-entry Permit will be given permission to stay for three months upon arrival in Bermuda. Extension of the visit may be applied for.

Residential Certificate-holders have the privilege of acquiring a condominium anywhere in Bermuda, provided the unit has an Annual Rental Value greater than the minimum in effect at the time for purchase by non-Bermudians. Currently (2002: limits are revised from time-to-time) the minimum Annual Rental Value is \$28,800.

Residents on Work Permits

Any person who is working in Bermuda by reason of a work permit, other than a periodic or temporary permit, is considered a resident of Bermuda as long as the work permit is valid.

When a work permit reaches the end of its validity, provided the employer has made application for renewal of the permit, the person is permitted to continue to work and remain a resident in Bermuda while the application is being processed.

Where a person on a work permit ceases to be employed, the permit becomes invalid immediately. In order for the person to remain in Bermuda lawfully, he or she must apply for permission to stay. If the person intends to leave Bermuda, he or she is generally given two

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months in which to settle his or her affairs and leave Bermuda. If longer is required a request should be made in writing. If the person intends to seek alternative employment then he or she must apply for permission to do so. Normally permission to reside and seek alternative employment is given for two months in the first instance. An extension can be applied for if necessary. Where an application to reside and seek employment is refused, normally a person is given a period of two months in which to settle his or her affairs and leave Bermuda. If more time is needed an application will be considered on its merits.

There is no guaranty that dependants, who are declared on the initial immigration questionnaire form as accompanying the employee, will be given permission to reside with the work permit holder unless the latter submits proof that he or she can support the dependant. Proof can include:

- bank statement
- recent pay slips
- confirmation that they have suitable accommodation

Dependants over the age of sixteen years will not normally be permitted to enter Bermuda to reside.

Dependants who are declared on the initial application as not accompanying the work permit employee, or who are not declared at all, must apply for the specific permission of the Minister to reside in Bermuda.

Marriages of Convenience

Under the provisions of section 60 of the Bermuda Immigration and Protection Act, 1956 a non-Bermudian has the right to be employed in Bermuda without Immigration control provided:

- he or she is married to a person who possesses Bermudian status;
- he or she is living together as husband and wife with his or her Bermudian spouse; and
- his or her Bermudian spouse is ordinarily resident in Bermuda.

The Act does not require the Department of Immigration to issue any form of proof that a person enjoys spouse's employment rights or residential privileges. However, other agencies may require such proof. In order to be of assistance the Department of Immigration issues letters to spouses of Bermudians.

As the spouse of a Bermudian acquires rights to work and reside in Bermuda from the date of the marriage, this does raise the issue of "marriages of convenience". Although there is no legal definition of a marriage of convenience, there is a fair and formal assessment to determine whether, in any particular case, the marriage is genuine. The Department of Immigration will only issue letters to a *bona fide* spouse of a Bermudian.

The issue is being researched to determine whether legal sanctions can be developed to counteract this problem. However, certain procedures are being considered to try to look behind the marriage to confirm that, in fact, there is a genuine, valid and subsisting relationship. Such

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measures being considered include a more rigorous examination by way of questionnaire, comparable in some aspects to the United States practice.

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