



# DEPARTMENT OF IMMIGRATION

*Ministry of Labour, Home Affairs and Public Safety*

## **W8 - Measures to Inhibit Long-Term Residency**

**POLICY: MEASURES TO INHIBIT LONG-TERM RESIDENCY**

**REF: W8**

- VOLUNTARY WAIVER OF RESIDENCE RIGHTS
- TERM LIMITS ON WORK PERMITS

## Measures to Inhibit Long-Term Residency

### **POLICY: Measures to Inhibit Long-Term Residency**

**REF: W8**

#### **PURPOSE:**

To discourage the expectation that work permit approval is tantamount to permanent residence rights in Bermuda.

#### **EXPLANATION:**

There are about 8,000 non-Bermudians in the workforce. These in turn have 4,000 dependants between them. The pattern of employment in Bermuda is such that half the non-Bermudians who arrive in any given year are still in Bermuda five years later. Of those, half (a quarter of the original arrivals) are still here ten years after arrival. Of those in turn, half (one eighth of the original entrants) are still in Bermuda after fifteen years, and so on.

The community is very concerned that non-Bermudians, who work in Bermuda, should not be allowed to stay for such a long time that they and their children acquire a legitimate expectation of permanent residence status.

Unless there is the capacity and ability to grant some form of long-term residency status to large numbers of non-Bermudians, there has to be consideration given at the earlier stages to control and monitor the grant of work permits for extended periods.

### **Voluntary Waiver of Residence Rights**

One measure adopted here is to have a mechanism whereby a person for whom an initial work permit application is being made should be invited to sign a waiver on first arrival in Bermuda. By signing, the person waives the right to exercise any claims or expectations of long-term residence that might normally arise as a result of his or her ordinary residence in Bermuda.

#### **STATEMENT:**

The invitation to sign the waiver does not apply to anyone who first took up ordinary residence in Bermuda for employment before 1 August 1989, unless an existing permit holder chooses, on a voluntary basis, to sign. Note that, the Government has enacted the Bermuda Immigration and Protection Amendment Act 2002 to provide long-term residents who arrived in Bermuda before 1 August 1989 access to Bermudian status or permanent residence.

All other persons are invited to sign a waiver, either before entering Bermuda to take up employment, or at the next work permit renewal. The waiver is framed in the following terms:

**“I hereby, freely and without coercion, waive any rights that may accrue to me, or to my dependants, on the basis of the British Nationality Act 1981, British common law or natural justice as a result of my ordinary residence in Bermuda for the purpose of employment in Bermuda on a work permit. With respect to my permission to reside and work in Bermuda I declare that I have read and understood section 7A of the Bermuda Immigration and Protection Act 1956, which states:**

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*'(1) A grant to a person shall not, except to the extent, if any, expressed in the grant, confer upon him any right, or ground or support any hope, claim or expectation which he may assert—*

- (a) to or of any extension or renewal of the right or rights expressed in the grant; or*
- (b) to or of the award of any right or rights other than the right or rights so expressed.*

*(2) In subsection (1), "grant" means a certificate, licence, permit or other permission (whether so called or by any other name) given or issued to a person under any provision of this Act.' "*

The purpose of the waiver is to be transparent by disclosing, up-front, that, irrespective of any work permit renewals, any form of long-term resident status will not be conferred on the permit holder.

Whether the person signs the waiver or not is completely voluntary. It will have no bearing on whether the initial work permit will be granted or not. However, the person who does not sign the waiver will know that, unless he or she is otherwise exempt, his or her term in Bermuda on a work permit will be limited to the maximum under current policy.

#### **Term Limits on Work Permits**

The Minister has always had, and will continue to have, the authority to limit the length of time a person may stay in Bermuda on work permits. The Bermuda community has made a clear statement that Bermuda should not be host in the future to large numbers of long-term residents. To achieve the community's wishes, it will be necessary for the Minister to exercise the right to limit the length of time individuals remain in Bermuda on work permits.

#### **STATEMENT:**

The practical effect of this policy is that, where there are no Bermudians available in these areas, there will be no term limits on work permits where the business that is applying, demonstrates to the Minister that it is a good corporate citizen. The absence of available Bermudians may be the result of a severe shortage, either because the scarce resources world-wide have a local impact, or there are shortages locally owing to the exceptional demand. Alternatively the person or position may be key to the success of the business. The effect is that, where a case can be made that the required skill-sets are not available locally, the work permit holder will be designated as key. Accordingly, there will be no term limits put on such a person's employment in Bermuda unless and until there is a shift which reflects that Bermuda is able to produce, and is in fact producing, the numbers required to sustain the economy.

The aim is to enact policies which recognise the diversity of the economy and our reliance on international business as a key component of the economy and therefore to produce policies which do in fact work in tandem to maintain and sustain key personnel. While it would be wrong in principle to define categories so that only those occupying higher echelon positions are able to be designated as key personnel, the intent is not to discriminate against small businesses

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by only affording the international business sector the opportunity to have persons designated as exempt from term limits.

Unless the work permit holder is otherwise exempt, he or she will be limited to a maximum term of six years. This term limit is a reasonable compromise between the uneconomical short end and the socially unacceptable long end of the scale.

There will be shorter-term permits and renewal beyond the general maximum number of six years is possible if the employer makes a strong enough case to justify it because of a genuine and real need to renew the permit. Generally, no extensions will be permitted beyond a further three-year period bringing the maximum to nine years in total.

Work permit term limits do not apply where the individual is key to the business. For an employee to be categorised as “key” to the business’s operation, the business must demonstrate that one or more of the following is true:

- the person is among the best practitioners in the world; or
- the person has rare specialised expertise that cannot be easily found world-wide; or
- although not particularly specialised, there is a “severe shortage” of the person’s particular skills i.e. a shortage in Bermuda arising from the difficulty of recruiting persons because there is a general, chronic shortage of resources overseas; or
- without the continued presence of the individual the business will be seriously injured to its own detriment and to that of the interests of Bermuda and Bermudians; or
- the person has crucial business contacts which are critical to the business’s continued success; or
- the individual is directly responsible for creating well-paying jobs to which Bermudians can aspire; or
- the person is directly responsible for training Bermudians in worthwhile careers and the business, based on its objective assessment of the individual’s attributes, relies on his or her skill and expertise in this regard.

Key persons can be found at all levels and in all areas of a business and are to be found not only among Chief Executive Officers, Chief Financial Officers and other senior managers. They can be technical, professional, clerical or service as well as managerial staff. It is up to the employer to make the case to the Minister that a particular individual or post is key to the organisation`.

Work permit term limits will not apply where there is a shortage in Bermuda arising from the difficulty of recruiting persons because there is a general, chronic shortage of resources overseas with a local impact. Examples of categories where there is such a shortage include: chartered accountant; actuary; chef; registered nurse; technically skilled specialists in information systems/technology fields. There may be other, less prominent categories where there are severe shortages. Employers are invited to make their case in advising the Minister.

When a person is required to leave Bermuda after working for six (or at most nine) years, in order for that person to become eligible, again, for employment in Bermuda, he or she will have to break ordinary residence in the Island for at least two years. A person who has broken his or her residence in Bermuda for two years or more may reapply for work in Bermuda and start afresh.

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The policy took effect from 31 March 2001. As of 1 April 2001, any application for a new work permit, or a work permit renewal, will be based on the foregoing policy. For each work permit holder, whose initial permit began on or before 31 March 2001 and to whom the policy applies, his or her term limit started on the 1 April 2001. A work permit holder's length of residence in Bermuda, before 1 April 2001, will not count towards the six-year term limit. It is acknowledged that the Minister can refuse a work permit on a case-by-case basis, if the circumstances warrant it, regardless of a person's length of residence in Bermuda. However, to make the policy retroactive across the board would be unfair and could have legal implications.

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