

CAYMAN ISLANDS



Supplement No. 4 published with Extraordinary
Gazette No. 6 dated 23rd January, 2019.

**THE IMMIGRATION (TRANSITION) LAW, 2018
(LAW 33 OF 2018)**

**THE IMMIGRATION (TRANSITION) (TEMPORARY WORK PERMITS
AND BUSINESS VISITORS' PERMITS) REGULATIONS, 2019**

**THE IMMIGRATION (TRANSITION) (TEMPORARY WORK PERMITS
AND BUSINESS VISITORS' PERMITS) REGULATIONS, 2019**

ARRANGEMENT OF REGULATIONS

1. Citation and commencement
2. Definitions
3. Prescribed forms, etc.
4. Temporary work permits
5. Business visitors' permit
6. Training and recruitment
7. Fees for work permit and business visitors' permit
8. Appeal
9. Repeal

CAYMAN ISLANDS

**THE IMMIGRATION (TRANSITION) LAW, 2018
(LAW 33 OF 2018)**

**THE IMMIGRATION (TRANSITION) (TEMPORARY WORK PERMITS
AND BUSINESS VISITORS' PERMITS) REGULATIONS, 2019**

The Cabinet, in exercise of the powers conferred by section 72 of the Immigration (Transition) Law, 2018 makes the following Regulations -

1. (1) These Regulations may be cited as the Immigration (Transition) (Temporary Work Permits and Business Visitors' Permits) Regulations, 2019. Citation and commencement

(2) These Regulations shall come into force immediately after the commencement of the Customs and Border Control Law, 2018 and the Immigration (Transition) Law, 2018.

2. In these Regulations - Definitions

“business visitor” means a person who has been issued with a business visitor’s permit granted under regulation 5;

“Director” means the Director of the Workforce, Opportunities and Residency Cayman Office who is appointed under section 6; or a delegate of the Director appointed under section 7(2);

“WORC” means the Department established under section 3 of the Immigration (Transition) Law, 2018;

“seasonal worker” means a person who has been or may be granted a temporary work permit by the Director under regulation 4 for employment in the tourism, hospitality or water sports industry during the peak tourism season for a continuous period not exceeding eight months in any period of twelve months;

“section” means a section of the Immigration (Transition) Law, 2018; and

“temporary work permit” means a work permit issued under regulation 4.

Prescribed forms, etc. 3. A form, notice, certificate, licence, permit, warrant, book, register or other document is in the prescribed form if it has been issued or approved for the purpose by the Director.

Temporary work permits 4. (1) The Director may, on application in the prescribed form, accompanied by such documentary evidence as may be required by the Director, by or on behalf of a person who desires to enter and remain in the Islands temporarily for the purposes of gainful occupation -

- (a) grant to such person a work permit, in these regulations referred to as a temporary work permit, in the prescribed form upon payment of the prescribed fee;
- (b) vary or modify the terms of such permit upon payment of the prescribed fee;
- (c) refuse the application for the permit; or
- (d) revoke a temporary work permit so granted.

(2) A work permit granted under paragraph (1) may be either -

- (a) a temporary work permit, for a continuous period of up to six months which may, if granted for a period of less than six months, be renewed so long as the total period of validity does not exceed six months; or
- (b) a temporary work permit, for a seasonal worker for a continuous period of eight months; and such permit cannot be extended or renewed, nor may a work permit be issued with respect to the same worker unless that person has left the Islands for at least three months immediately following the expiry of the temporary work permit for a seasonal worker.

(3) In order to determine whether an application under this regulation should be granted or refused or a temporary work permit revoked, the Director shall have regard to the following criteria -

- (a) in relation to the prospective employer, that the prospective employer has demonstrated the prospective employer's genuine need to engage the services of the prospective worker;
- (b) in relation to the worker -
 - (i) the worker's character, reputation and health, and where relevant, the character, reputation and health of the worker's dependants;
 - (ii) the worker's professional and technical qualifications and the worker's experience and competence to undertake the position applied for;

- (iii) the economic and social benefits which the worker may bring to the Islands;
 - (iv) the sufficiency of the resources or the proposed salary of the worker and, where the worker's spouse is employed within the Islands, those of the spouse, and the worker or spouse's ability to adequately maintain their dependants;
 - (v) the worker's facility in the use of the English language; and
 - (vi) the location, type and suitability of the accommodation available for the worker and the worker's dependants, if any, throughout the term of the work permit.
- (c) the protection of local interests and in particular of Caymanians, including and where applicable, the provisions set out in section 58(2)(c);
 - (d) the availability of the services of a suitable person already legally and ordinarily in the Islands;
 - (e) the desirability of granting permits to applicants with different backgrounds and from different geographical areas so that a suitable balance in the social and economic life of the Islands may be maintained;
 - (f) where applicable, the provisions set out in section 60;
 - (g) the requirements of the community as a whole; and
 - (h) such other matters that may arise from the application.
- (4) Subject to paragraph (5), an application for the grant of a temporary work permit in respect of a person who gained entry as a visitor shall not be -
- (a) considered, unless the application was submitted after the visitor's departure from the Islands; or
 - (b) approved, unless the visitor remained off the Islands during the processing of the application.
- (5) Notwithstanding paragraph (4), the Director may, where in the Director's opinion there exist extenuating circumstances, act in person to consider the application.
- (6) A prospective employer or, where the application is in respect of a person who wishes to be self-employed, the applicant, shall satisfy the Director that there has been compliance with paragraph (4)(a) and (b).
- (7) A prospective employer or an applicant who provides information to the Director in relation to paragraph (6), which information the prospective employer or applicant knows to be false or does not believe to be true, commits an offence.

(8) Where the Director refuses an application under this regulation either in whole or in part, the Director, shall give the applicant brief reasons for that rejection and inform the applicant of the applicant's rights under regulation 8.

(9) Failure of the Director to inform an applicant of the right of appeal referred to in regulation 8 shall not of itself give rise to a right of appeal and failure to give reasons as required by paragraph (8) when first promulgating the Director's decision to reject an application shall not give rise to such a right of appeal if the Director gives them to the applicant within thirty days of having made the decision.

Business visitors' permit

5. (1) Any person carrying on business in or from within the Islands who regularly throughout each year employs persons not legally and ordinarily resident in the Islands on a temporary basis, may make a single application in each year to the Director for the issue, in each year, of one or more business visitors' permits and for more than one visit.

(2) An application for business visitors' permits shall be in respect of such number of persons and visits as the company, partnership or firm wishes to have granted and shall contain, in respect of each such person, such information as may be required by the Director.

(3) An application shall state the maximum number of times it is desired that each business visitor be admitted to the Islands in any one year, the occupation of the applicant and the maximum duration of the stay of each business visitor during each visit.

(4) A business visitors' permit shall not be issued for more than fourteen days on any one visit or in respect of a person who is ineligible to be granted a work permit by virtue of section 66(1).

(5) The Director, in considering an application under this regulation, shall take into account such of the matters set out in section 58(2) to (4) as the Director considers relevant and, when granting business visitors' permits, may impose such conditions and limitations as the Director thinks fit.

Training and recruitment

6. (1) The Board or the Director may require an applicant for the grant or renewal of a temporary work permit to provide details of any programme that the applicant has that is designed to ensure that Caymanians are provided with the instructions and practical experience necessary to make them fully qualified to carry out the job concerned satisfactorily and as expeditiously as possible.

(2) The absence of such a programme or the failure to implement such a programme without reasonable cause constitutes a ground for denying the grant or renewal of a temporary work permit.

(3) Where the Director is satisfied that there are insufficient Caymanians, or persons legally and ordinarily resident in the Islands, to meet an expected demand for persons to fill jobs in any profession, trade or industry or in relation to a particular project or enterprise, the Director may, in consultation with the Board, establish arrangements with authorities outside the Islands for the selection there of persons ready, willing and able to fill those jobs for the purpose of recommending their recruitment to prospective employers within the Islands.

(4) An application for a temporary work permit involving a person recommended in accordance with paragraph (3) shall be given preference by the Board or the Director.

7. (1) The fees set out in the Schedule to the Immigration Regulations (2018 Revision) relating to temporary work permits shall apply for the purposes of these Regulations.

Fees for work permit
and business visitors'
permit

(2018 Revision)

(2) The annual fee, in respect of business visitors' permits shall be such as are provided under Schedule 1 of the Immigration Regulations (2018 Revision) and shall be determined by the number of persons in respect of whom application is made and the number of visits per person in the relevant calendar year.

8. (1) Any person aggrieved by, or dissatisfied with, a decision of the Director to -

Appeal

- (a) refuse an application for the grant of a temporary work permit under regulation 4; or
- (b) revoke a temporary work permit,

may, within seven days of the communication of the decision to that person, appeal therefrom to the pertinent Board whose decision shall be final and binding upon the appellant.

(2) The Board's decision under paragraph (1) shall, if notice thereof is sent to the appellant -

- (a) by post, be deemed to have been received by the appellant no later than seven days from the date of dispatch; or
- (b) by electronic mail, be deemed to have been received by the appellant no later than twenty-four hours after its transmission.

(3) Pending the outcome of an appeal under this regulation the prospective worker or worker named in the application or on the temporary work permit may be allowed to remain in the Islands if the appellant satisfies the Director of Customs and Border Control that the appellant is able to support the appellant and the appellant's dependants, if any.

(4) An appeal under this regulation shall be by notice in writing addressed to the Secretary of the pertinent Board and such notice -

- (a) shall specify the decision against which the appeal is made; and
- (b) shall be accompanied by a copy of the original application which is the subject of appeal and the prescribed non-refundable fee.

(5) An appeal under this regulation may be lodged on the ground, or grounds, and no other, that the decision in question is -

- (a) erroneous in law;
- (b) unreasonable;
- (c) contrary to the principles of natural justice; or
- (d) at variance with the Regulations.

(6) In this regulation "pertinent Board" means the Work Permit Board except that an appeal in respect of a decision in relation to a temporary work permit for Cayman Brac or Little Cayman shall be heard by the Cayman Brac and Little Cayman Immigration Board.

(7) On receipt of a notice of appeal the pertinent Board shall, within fourteen days, notify the Director of the decision against which the appeal is made.

(8) Upon receipt of a notification under paragraph (7) the Director shall, within a reasonable period, deliver to the pertinent Board and the appellant, the reasons for the Director's or its decision.

(9) Upon receipt of the reasons referred to in paragraph (8) the appellant shall, within fourteen days, file the appellant's detailed grounds of appeal upon which the hearing shall be determined by the pertinent Board and serve a copy of the grounds of appeal on the Director.

(10) The period within which detailed grounds of appeal must be filed under paragraph (9) may be extended at the discretion of the Chairman of the pertinent Board upon the request of the appellant for good reason shown in writing.

(11) Upon receipt of the detailed grounds of appeal filed by the appellant under paragraph (9) and any subsequent information requested, the pertinent Board may -

- (a) if it is satisfied that the appellant has complied with the requirements of this regulation, proceed with a hearing on grounds; or
- (b) if it is satisfied that the appellant has failed to comply with any of the requirements of this regulation, quash the appeal without a hearing on grounds.

(12) When considering the detailed grounds filed by the appellant under paragraph (9), the pertinent Board may request additional information or further particulars from the appellant.

(13) At a hearing on grounds as referred to in paragraph (11), the Board shall take into account -

- (a) the reasons provided by the Director under paragraph (8) and all information that was submitted by the appellant at the time of the appellant's original application; and
- (b) the detailed grounds filed by the appellant under paragraph (9).

(14) A hearing on grounds under paragraph (11) shall be on the basis of the detailed grounds filed by the appellant under paragraph (9) and neither the parties nor their representatives shall be present at the hearing.

(15) Notwithstanding paragraph (14), the pertinent Board may, in its absolute discretion, call upon either party or any persons as it deems necessary and relevant to address it.

(16) Where at a hearing on grounds the pertinent Board determines that at least one of the grounds contained in paragraph (5) has been made out, the pertinent Board shall proceed to a rehearing of the original application which was the subject of the appeal.

(17) The pertinent Board when rehearing an application under paragraph (16) shall do so by way of a hearing de novo and shall take into account any fresh evidence put forward by the appellant or the Director that may have arisen in relation to the parties, which is to be submitted in writing.

(18) The law in force at the time of the rehearing by the pertinent Board shall govern the proceedings under paragraph (16).

(19) Neither the appellant nor the appellant's representative shall be permitted to be present at the rehearing of the original application which shall be based on written submissions with respect to fresh evidence or changes in circumstances.

(20) A decision of the pertinent Board shall be notified to the appellant within a reasonable period of time.

(21) A decision under paragraph (11) to quash an appeal shall not in itself give rise to a right of appeal.

(22) Decisions made under this regulation shall be deemed to be administrative and not judicial decisions.

(23) The fee for an appeal under this regulation shall be one hundred dollars.

Repeal

9. (1) The Immigration Regulations (2018 Revision) is amended in regulation 2 by repealing the definition of the words "temporary work permit".

(2) Regulation 4(8) of the Immigration Regulations (2018 Revision) is repealed.

Made in Cabinet the 21st day of January, 2019.

Kim Bullings

Clerk of the Cabinet.