

## EMPLOYMENT OF NON-CITIZENS ACT, 1981

No. 11



of 1981

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An Act to regulate the employment and other engagement in occupations for reward or profit of certain persons who are not citizens of Botswana and to provide for matters incidental thereto.

*Date of Assent: 14.4.81.*

*Date of Commencement: On Notice.*

ENACTED by the Parliament of Botswana.

Short title  
and  
commence-  
ment

1. This Act may be cited as the Employment of Non-Citizens Act, 1981, and shall come into operation on such date as the Minister may, by notice published in the Gazette, appoint.

Inter-  
pretation

2. In this Act, unless the context otherwise require, —

“authorized officer” means a person appointed under section 3 to be an authorized officer for the purposes of this Act;

“Board” means the Immigrants Selection Board established by section 18 of the Immigration Act;

“certificate of exemption” means a certificate of exemption issued under section 10 or a duplicate thereof issued under section 17;

“Commissioner of Labour” means the Commissioner of Labour of Botswana;

“employ” has the same meaning as in the principal Act for the time being regulating employment;

“non-citizen” means a person other than —

(a) a citizen of Botswana;

(b) a person entitled to immunity from suit and legal process under the Diplomatic Immunities and Privileges Act; or

(c) a person or a member of a class of persons declared by the Minister, by order published in the Gazette, not to be non-citizens for the purposes of this Act;

“prescribed” means prescribed by regulations made by the Minister under section 22;

“work permit” means a work permit issued under section 5 or a duplicate thereof issued under section 17.

Cap. 25:04

Cap. 39:01

Cap. 25:04

Appointment  
of  
authorized  
officers

3. The Minister may appoint from among public officers persons to be authorized officers for the purposes of this Act.

Control of  
employment,  
etc., of  
non-citizens

4. (1) No non-citizen shall be employed or otherwise engaged in any occupation for reward or profit unless —

(a) he is the holder of a work permit issued to him under this Act permitting him to be employed or otherwise so engaged and he is employed or otherwise so engaged in accordance with the terms thereof and the conditions, if any, attached thereto; or

(b) he is the holder of a certificate of exemption issued to him under this Act.

- (2) No person shall employ a non-citizen unless –
- (a) the non-citizen is the holder of a work permit issued to him under this Act permitting him to be employed and he is employed in accordance with the terms thereof and the conditions, if any, attached thereto; or
  - (b) the non-citizen is the holder of a certificate of exemption issued to him under this Act.

(3) Any person who contravenes this section shall be guilty of an offence and liable to a fine of P1 000 and to imprisonment for 12 months.

(4) Where, in any proceedings for an offence under this section, it is alleged in the charge that an accused or any other person was at a time specified therein a non-citizen, the court shall presume that he was at that time a non-citizen unless the contrary is proved.

5. (1) An application for a work permit or the renewal of a work permit may be made by any person and shall be lodged, in such form and manner as the Minister may require together with the prescribed fee, with an authorized officer who shall endorse his recommendation on the application form and transmit it to the Commissioner of Labour who shall in turn endorse his own recommendation on the application form and place the form before the Board.

Applications  
for work  
permits and  
renewals  
thereof and  
determination  
of same

(2) For the purpose of making his recommendation in accordance with subsection (1), the Commissioner of Labour or an authorized officer may require any person to submit immediately to examination or to present himself to the Commissioner of Labour or to the authorized Officer, as the case may be at such time and place as shall be specified and, at that time and place, to submit to examination.

(3) Any person who has been required under subsection (2) to submit to examination may be examined by the Commissioner of Labour or the authorized officer in question, as the case may be, and shall answer truthfully and to the best of his knowledge every question put to him for the purpose of making the required recommendation.

(4) The Board shall consider every application placed before it in accordance with subsection (1) and shall either issue a work permit, renew the existing work permit or reject the application, in which last case the Commissioner of Labour shall inform the applicant in writing of the Board's decision.

(5) For the purpose of determining an application placed before it in accordance with subsection (1), the Board may call for and obtain such additional information relating to the application as it thinks it necessary or expedient to have.

(6) For the purpose of determining an application placed before it in accordance with subsection (1), the Board shall take into account —

- (a) the effect of issuing a work permit or renewing the existing work permit upon the opportunities for employment or for other engagement for reward or profit in occupation in question, as the case may be, open to citizens of Botswana; and
- (b) where the application relates to employment, the arrangements made or to be made by the employer to train a citizen of Botswana to replace the person in respect of whom the application is made in the event of work permit being issued to him or his existing work permit being renewed.

(7) For the purpose of determining an application placed before it in accordance with subsection (1), no quorum of the Board shall be constituted unless one of the members present is the Commissioner of Labour or some other public officer directly subordinate to him.

(8) Any person who —

- (a) fails to comply with a requirement made of him under subsection (2) shall be guilty of an offence and liable to a fine of P500 and to imprisonment for 6 months; or
- (b) contravenes subsection (3) or, in connexion with an application under this section of a work permit or for the renewal of a work permit, furnishes any information which he knows to be false or does not believe to be true shall be guilty of an offence and liable to a fine of P1 500 and to imprisonment for 18 months.

6. (1) Every work permit —

- (a) shall be issued in such form as the Minister may require and shall be issued or renewed for such period as the Board shall determine, which period shall be specified in the permit, and shall contain such other terms as the Board shall determine; and
- (b) may be issued or renewed subject to such conditions as the Board may determine, which conditions shall be specified in the permit.

(2) An application to have the terms of a work permit or the conditions attached thereto varied may be made at any time by any person and shall be lodged, in such form and manner as the Minister may require together with the prescribed fee and the work permit, with the Commissioner of Labour.

(3) The Commissioner of Labour shall consider every application lodged with him in accordance with subsection (2) and shall either grant the application, wholly or in part, and vary the terms of or the conditions attached to the work permit accordingly or reject the application.

Form and terms of and conditions attached to work permits

(4) Where the Commissioner of Labour varies the terms of or the conditions attached to a work permit under subsection (3), he shall endorse every such variation on the work permit.

(5) Having reached a decision in accordance with subsection (3), the Commissioner of Labour shall, subject to subsection (4), forthwith return the work permit to the applicant.

(6) Every decision of the Commissioner of Labour in accordance with subsection (3) shall be final.

7. (1) An applicant for a work permit or the renewal of a work permit who is aggrieved by a decision to reject his application or as to any term included in or condition attached to the work permit by the Board may appeal against that decision to the Minister.

Appeals in  
connexion  
with  
work  
permits

(2) Every appeal under this section shall be lodged, in such form and manner as the Minister may require together with the prescribed fee, with the Minister not later than 30 days immediately after the day on which the decision complained of was communicated to the appellant.

(3) The Minister shall consider every appeal lodged with him in accordance with subsection (2) and shall –

(a) in the case of an appeal against a decision to reject an application either dismiss the appeal or allow it, in which last case the Commissioner of Labour shall forthwith issue a work permit or renew the existing work permit and the permit shall contain such terms as the Minister shall determine and may be issued or renewed subject to such conditions as the Minister may determine, which conditions shall be specified in the permit; or

(b) in the case of an appeal against a decision as to any term included in or condition attached to a work permit, either dismiss the appeal or allow it, in which last case the Minister shall rescind the term or condition or alter its terms, in which last case the permit shall contain the term or the condition shall be specified therein as so altered by Minister.

8. (1) The Minister may at any time by order in writing served on the holder of a work permit, cancel the work permit or vary the terms thereof or the conditions attached thereto:

Cancellation  
and  
compulsory  
variation  
of work  
permits

Provided that such cancellation or variation shall not take effect until the expiry of 7 days, or such greater number of days as the Minister may specify in the order, immediately after the day on which the Minister's order was served on the holder of the work permit.

(2) The holder of a work permit on whom an order of the Minister has been served under subsection (1) shall forthwith transmit his permit to the Commissioner of Labour who shall –

- (a) where the permit is cancelled by the order, dispose of the permit in such manner as the Minister may direct; or
- (b) where the terms of or the conditions attached to the permit are varied by the order, endorse every such variation on the permit and forthwith return it to the holder.,

(3) The holder of a work permit who, without reasonable excuse, contravenes subsection (2) shall be guilty of an offence and liable to a fine of P100 and to imprisonment for one month.

Work permits  
to be  
returned  
on expiry

9. (1) On the expiry of the period for which a work permit has been issued or renewed, the holder of the permit shall forthwith transmit the permit to the Commissioner of Labour who shall dispose of the permit in such manner as the Minister may direct.

(2) The holder of a work permit who, without reasonable excuse, contravenes subsection (1) shall be guilty of an offence and liable to a fine of P100 and to imprisonment for one month.

Exemption  
from  
section 4 (1)

10. (1) The Minister may, by order published in the Gazette, exempt any person or every member of any class of persons therein specified from section 4 (1), subject to the condition that he holds a certificate of exemption issued to him under this Act.

(2) An application for a certificate of exemption may be made by any person and shall be lodged, in such form and manner as the Minister may require, with the Commissioner of Labour.

(3) No fee shall be payable in respect of an application for a certificate of exemption.

(4) The Commissioner of Labour shall consider every application lodged with him in accordance with subsection (2) and shall either issue a certificate of exemption, if he is satisfied that the person in respect of whom the application is made is a person or a member of a class of persons specified in an order under subsection (1), or reject the application, if he is not so satisfied, in which last case he shall inform the applicant in writing of his decision.

(5) For the purpose of determining an application lodged with him in accordance with subsection (2), the Commissioner of Labour may call for and obtain such additional information relating to the application as he thinks it necessary or expedient to have.

(6) Every certificate of exemption shall be issued in such form as the Minister may require.

(7) Any person who, in connexion with an application under this section for a certificate of exemption, furnishes any information which he knows to be false or does not believe to be true shall be guilty of an offence and liable to a fine of P1 500 and to imprisonment for 18 months.

11. (1) An applicant for a certificate of exemption who is aggrieved by a decision to reject his application may appeal against that decision to the Minister.

Appeals in connexion with certificates of exemption.

(2) Every appeal under this section shall be lodged, in such form and manner as the Minister may require together with the prescribed fee, with the Minister not later than 30 days immediately after the day on which the decision complained of was communicated to the appellant.

(3) The Minister shall consider every appeal lodged with him in accordance with subsection (2) and shall either dismiss the appeal or allow it, in which last case the Commissioner of Labour shall forthwith issue a certificate of exemption.

12. (1) Where the holder of a certificate of exemption ceases to be a person exempted from section 4 (1), whether by revocation of the relevant order under section 10 (1) or otherwise, the certificate shall thereupon cease to be valid and the holder thereof shall forthwith transmit the certificate to the Commissioner of Labour who shall dispose of the certificate in such manner as the Minister may direct.

Cessation of validity of certificates of exemption.

(2) The holder of a certificate of exemption who, without reasonable excuse, contravenes subsection (1) shall be guilty of an offence and liable to a fine of P100 and to imprisonment for one month.

13. (1) The holder of a work permit or certificate of exemption shall at all times use his best endeavours to keep the same safe and in an undamaged and undefaced condition.

Holders of work permits or certificates of exemption to keep same safe and in undamaged and undefaced condition.

(2) The holder of a work permit or certificate of exemption who contravenes subsection (1) shall be guilty of an offence and liable to a fine of P100 and to imprisonment for one month.,

14. (1) The Commissioner of Labour or an authorized officer may require the holder of a work permit or certificate of exemption or any person claiming to be the holder of such a permit or certificate to produce it for examination by the Commissioner of Labour or by an authorized officer at such time and place as the person making the requirement shall specify.

Power of Commissioner of Labour and authorized officers to require production of work permits and certificates of exemption.

(2) Any person who, without reasonable excuse, fails to comply with a requirement made of him under subsection (1) shall be guilty of an offence and liable to a fine of P500 and to imprisonment for 6 months.

Power of Commissioner of Labour and authorized officers to examine persons in possession of work permits or certificates of exemption as to identity

15. (1) The Commissioner of Labour or an authorized officer may require any person in possession of a work permit or certificate of exemption of which he claims to be the holder to submit immediately to examination or to present himself to the Commissioner of Labour or an authorized officer at such time and place as the person making the requirement shall specify and, at that time and place, to submit to examination.

(2) Any person who has been required under subsection (1) to submit to examination may be examined by the Commissioner of Labour or an authorized officer and shall answer truthfully and to the best of his knowledge every question put to him by the Commissioner of Labour or the authorized officer, as the case may be, for the purpose of ascertaining whether he is or is not the holder of the work permit or certificate of exemption in his possession.

(3) Any person who —

(a) fails to comply with a requirement made of him under subsection (1) shall be guilty of an offence and liable to a fine of P500 and to imprisonment for 6 months; or

(b) contravenes subsection (2) shall be guilty of an offence and liable to a fine of P1 500 and to imprisonment for 18 months.

Work permits and certificates of exemption to be returned before final departure from Botswana

16. (1) Where the holder of a work permit or certificate of exemption is about finally to leave Botswana, he shall, not less than 14 days immediately before the day of his proposed departure from Botswana, transmit the permit or certificate to the Commissioner of Labour who shall dispose of the same in such manner as the Minister may direct.

(2) The holder of a work permit or of a certificate of exemption who, without reasonable excuse, contravenes subsection (1) shall be guilty of an offence and liable to a fine of P100 and to imprisonment for one month.

Replacement of work permits and certificates of exemption

17. (1) Where the holder of a work permit or certificate of exemption which has been lost, destroyed, damaged or defaced wishes to replace the same, he shall lodge an application for a duplicate thereof, in such form and manner as the Minister may require together with the prescribed fee, and the permit or certificate, unless it has been lost or destroyed, with the Commissioner of Labour.

(2) The Commissioner of Labour shall consider every application lodged with him in accordance with subsection (1) and shall, if he is satisfied that the permit or certificate has been lost, destroyed, damaged or defaced, issue a duplicate thereof to the applicant.

(3) The Commissioner of Labour shall dispose of every permit and certificate lodged with him in accordance with subsection (1) in such manner as the Minister may direct.

<p>18. (1) Every person who employs, during any period of 12 months ending on 1st January, the holder of a work permit or certificate of exemption shall, within 15 days immediately after the expiry of that period, furnish to the Commissioner of Labour a return for that period in such form and containing such particulars as the Minister shall require.</p>	<p>Returns by employers of holders of work permits or certificates of exemption</p>
<p>(2) Any person who, without reasonable excuse, contravenes subsection (1) shall be guilty of an offence and liable to a fine of P250 and to imprisonment for 3 months.</p>	
<p>19. (1) The Commissioner of Labour shall keep at his principal office a register in respect of work permits and applications therefor and a separate register in respect of certificates of exemption.</p>	<p>Duty of Commissioner of Labour to keep registers in respect of work permits and certificates of exemption</p>
<p>(2) Each of the registers required to be kept by subsection (1) shall be in such form and the Commissioner of Labour shall enter or cause to be entered therein such particulars as the Minister may require.</p>	<p>registers in respect of work permits and certificates of exemption</p>
<p>20. (1) The Minister may give directions, either generally or with reference to a particular case, to the Commissioner of Labour or any authorized officer as to the exercise of any power or the performance of any duty conferred or imposed on him by this Act.</p>	<p>Power of Minister to give directions in connexion with carrying out functions under Act</p>
<p>(2) Notwithstanding any other provision of this Act, every person to whom directions have been given by the Minister under subsection (1) shall comply with those directions.</p>	
<p>21. In any proceedings for an offence under this Act an ingredient of which is the absence of a reasonable excuse, the court shall presume the absence of a reasonable excuse on the part of the person charged unless the contrary is proved.</p>	<p>Evidential presumption in relation to reasonable excuse</p>
<p>22. The Minister may make regulations for the better carrying into effect of the purposes and provisions of this Act.</p>	<p>Power of Minister to make regulations</p>
<p>23. (1) Where the Commissioner is of the opinion that an emergency exists which requires the immediate employment or other engagement in an occupation for reward or profit of a non-citizen, he may order that the provision of section 4 shall not apply in respect of that non-citizen, for such period and subject to such conditions as he may think fit.</p>	<p>Power of exemption of Commissioner of Labour in emergency</p>
<p>(2) Any order under this section may be issued either orally or in writing, in which last case it shall not require to be published in the Gazette.</p>	
<p>24. The provisions of the Schedule shall have effect as part of this Act.</p>	<p>Schedule</p>

SCHEDULE

(section 24)

CONSEQUENTIAL AND TRANSITIONAL PROVISIONS

Cap. 25:03 1. The Refugees (Recognition and Control) Act is amended by deleting section 14 thereof.

Cap. 47:02 2. The Employment of Visitors Act is hereby repealed:  
Provided that every visitor's work permit issued under that Act which had effect immediately before the commencement of this Act shall continue to have effect as if it were a work permit issued to the holder thereof under this Act.

3. Notwithstanding section 4 (1), a non-citizen who was not employed but was otherwise engaged in an occupation for reward or profit immediately before the commencement of this Act may, for the period of 3 months immediately following the commencement of this Act, continue to be so engaged without holding a work permit or certificate of exemption.

**PASSED by the National Assembly this 31st day of March, 1981.**

**I.P. GONTSE,**  
*Clerk of the National Assembly.*