

IMMIGRATION (AMENDMENT) ACT, 2014

No. 18



of 2014

ARRANGEMENT OF SECTIONS

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An Act to amend the Immigration Act.

Date of Assent: 14.05.2014

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Immigration (Amendment) Act, 2014, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and commencement

2. The Immigration Act, (in this Act referred to as “the Act”), is amended in section 5 by substituting for subsection (6), the following new subsection —

Amendment of section 5 of Cap. 25:02

“(6) A —

(a) female person shall be searched by a female immigration officer and where no female immigration officer is available, the search may be conducted by a female person designated for that purpose by an immigration officer; and

(b) male person shall be searched by a male immigration officer and where no male immigration officer is available, the search may be conducted by a male person designated for that purpose by an immigration officer.”.

3. Section 25 of the Act is amended by substituting for subsection (3), the following new subsection —

Amendment of section 25 of the Act

“(3) Where the Minister allows an appeal in relation to —

(a) a residence permit, the Director shall issue the residence permit; and

(b) a work permit, the Commissioner shall issue the work permit, to the appellant subject to such conditions as may be specified in such permit, and the decision of the Minister shall be communicated to the Board which refused the application.”.

Amendment
of section 29
of the Act

4. Section 29 of the Act is amended by —
- (a) substituting for subsection (1), the following new subsection —
“(1) Where the holder of a permit has not become a citizen of Botswana, a Board may renew his or her permit —
(a) after a period not exceeding five years for employees;
or
(b) after a period not exceeding 10 years for investors.”;
 - (b) substituting for subsection (2), the following new subsection —
“(2) An application for the renewal of a permit shall be lodged with an authorised officer, in the prescribed form and accompanied by a non-refundable prescribed fee.”; and
 - (c) deleting subsection (5).

Insertion of
section
29A in
the Act

5. The Act is amended by inserting immediately after section 29, the following new section —

“Variation of permit

29A. (1) A holder of a permit may lodge his or her application to vary the terms and conditions of the permit with an authorised officer, where, in the case of a work permit —

- (a) the employee is promoted or re-deployed; or
- (b) the investor wishes to add another business in which he or she has invested to the permit.

(2) An application for variation of a permit shall be lodged in a prescribed form and accompanied by a non-refundable prescribed fee.

(3) An authorised officer shall assess an application made under subsection (1) and endorse his or her recommendations on the application and transmit it to the Board.

(4) Where the Board approves an application for variation of a permit, the applicant shall submit to an authorised officer, a valid permit for the endorsement of the variation made.”.

Amendment
of
section 34 of
the Act

6. Section 34 is amended by —
- (a) inserting immediately after subsection (1), the following new subsection —
“(1A) The holder of a permit or of a certificate of exemption which is not to expire in a period of six months or less, and who has acquired a new passport, may make an application for a duplicate permit or certificate of exemption reflecting the new passport number, in such form and on payment of such prescribed fee.”; and
 - (b) substituting for subsection (2), the following new subsection —
“(2) An authorised officer shall consider an application lodged with him or her in accordance with subsections (1) and (1A) and shall, if he or she is satisfied that the permit or certificate of exemption has been lost, destroyed, damaged or defaced, or that the holder of the permit or certificate of exemption has acquired a new passport, issue a duplicate permit or certificate of exemption to the applicant.”.

7. Section 41 is amended by substituting for subsection (2), the following new subsection —

Amendment
of section 41
of the Act

“(2) An order to declare a person a prohibited immigrant shall be made —

- (a) in the case of a person referred to in subsection (1) (c) or (d), in writing by the President; or
- (b) in the case of a person referred to in subsection (1) (a) or (b), in writing by the Minister,

and the President or the Minister, as the case may be, shall cause the order to be served on the person to whom it relates.”

8. The Act is amended by substituting for section 46, the following new section —

Amendment
of section 46
of the Act

“Exemption
of prohibited
immigrant

46. (1) Where any person is a prohibited immigrant under this Act, the President, in the case of a person referred to in section 41 (1) (c) or (d), and the Minister, in the case of a person referred to in section 41 (1) (a) or (b), may, in writing, direct that such person shall cease to be a prohibited immigrant for such period and subject to such conditions as may be specified.

(2) The President or the Minister, as the case may be, may, in writing, cancel any direction issued under subsection (1) and on such cancellation the person in respect of whom the direction was made shall be a prohibited immigrant.”

9. The Act is amended by substituting for section 48, the following new section —

Amendment
of section 48
of the Act

“Exercise of
discretionary
powers by
President or
Minister

48. (1) A person shall not have the right to be heard before or after a decision is made by the President or the Minister under section 41.

(2) A person affected by any decision made under subsection (1) shall not have the right to demand any information as to the grounds of such decision nor shall any such information be disclosed in any court.”

PASSED by the National Assembly this 1st day of April, 2014.

BARBARA N. DITHAPO,
Clerk of the National Assembly.