

Corporate Immigration

Contributing editor
Julia Onslow-Cole



2017

GETTING THE
DEAL THROUGH

GETTING THE
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Corporate Immigration 2017

Contributing editor
Julia Onslow-Cole
PwC LLP

Publisher
Gideon Robertson
gideon.roberton@lbresearch.com

Subscriptions
Sophie Pallier
subscriptions@gettingthedealthrough.com

Senior business development managers
Alan Lee
alan.lee@gettingthedealthrough.com

Adam Sargent
adam.sargent@gettingthedealthrough.com

Dan White
dan.white@gettingthedealthrough.com



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87 Lancaster Road
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Tel: +44 20 3708 4199
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Bermuda

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Overview

1 In broad terms what is your government's policy towards business immigration?

The government of Bermuda allows business immigration. The mission of the Department of Immigration, which operates through the Ministry of Home Affairs (the Ministry) is to 'improve the economy by addressing the needs of the local and international business community and the career aspirations of Bermudians'.

In the 2016 budget speech, the Minister of Finance stated: 'today, we need to encourage people to come [to Bermuda] to live, to grow the population, to grow consumer spending, to grow earnings of foreign capital, to grow the tax base, to live in our vacant houses and thereby grow opportunities for Bermudians.'

The Bermuda Immigration and Protection Act 1956 (the Act) requires that all non-Bermudians must obtain specific permission (by way of work permits) if they are to engage in gainful occupation in Bermuda. In most cases the main criterion in assessing whether to grant foreign nationals permission to work in Bermuda is whether there is a suitably qualified Bermudian, spouse of a Bermudian or permanent resident certificate (PRC) holder who is interested in the job and available to do it.

Additional guidance regarding the requirements that non-Bermudians must meet in order to obtain permission to work in Bermuda is set out in the Work Permit Policy (the Policy) produced by the Ministry. The Policy contains various protections for the Bermudian workforce, including, for example, requirements to ensure that employers have conducted bona fide searches for qualified locals to fill the position. Recent changes to the Policy have shown marked improvements towards fostering a more business-friendly atmosphere.

The Department of Immigration cannot force an employer to hire Bermudians, spouses of Bermudians or PRC holders. It can only prevent the hiring of foreign nationals by refusing to grant a work permit - if the requirements are not met.

Immigration legislation and the Policy are enforced by the government. Amendments to the Act in 2013 provided greater powers to the Chief Immigration Officer to enforce the requirements of the Act and the Policy (for example, the Chief Immigration Officer can now impose civil penalties (up to Bda\$10,000) on employers who flout immigration policy).

Short-term transfers

2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?

For the purposes of this chapter, please note that 'visa' is interpreted as work permit permission.

See question 5 with respect to formal visa requirements.

Short-term business travellers under the Policy will generally fall into one of three categories:

- a business visitor who is a non-resident, who visits Bermuda and who undertakes certain limited business purposes;
- a short-term work permit holder, who is employed to work in Bermuda for a period of up to six months; or
- a periodic work permit holder, who is someone engaged by an employer who will make multiple visits to the island (for no more than 30 days per visit, with a maximum of 180 days per year).

Business visitors do not need work permit permission if they have a return ticket, their stay does not exceed 21 days and they are undertaking certain types of activities. A full list of such activities is included in the Policy. By way of example, a short-term business traveller to Bermuda for less than 21 days is able to do the following without work permit permission:

- attend broker, director or shareholder meetings;
- attend general business meetings with a Bermuda company where the business traveller is not being remunerated by the Bermuda company;
- present at business seminars not open to the general public;
- attend a job interview;
- attend a conference;
- make presentations in response to a request for a proposal if not being remunerated; and
- lawyers, clients, witnesses, experts and administrative support professionals visiting Bermuda in connection with international dispute resolution.

Note that this is not an exhaustive list and advice must be sought to determine if a business traveller can enter Bermuda without work permit permission. An extension to the 21-day requirement can be obtained under the Policy.

The other two categories are addressed below.

3 What are the main restrictions on a business visitor?

Short-term work permits or periodic work permits are required by those individuals whose activities in Bermuda fall outside the permissible activities for a business visitor (as summarised above) or are intended to last more than 21 days.

Short-term work permit applications are accepted for up to three to six months and may be extended for up to a further six months. The primary obstacle to obtaining a short-term permit is the requirement to advertise and vet qualified Bermudians, spouses of Bermudians and PRC holders. However, employers may be exempted from the requirement to advertise in certain circumstances (for example, where the intended work permit holder works for an overseas subsidiary or affiliate of the Bermuda employer).

A periodic work permit holder is able to stay in Bermuda to conduct work that he or she is contracted to provide to the employer for a period no greater than 30 days per visit. Periodic work permit holders are not permitted to be in Bermuda for more than a total of 180 days per calendar year. This type of permit is for individuals who work for an overseas office of the Bermuda company or for an individual who is a service provider contracted to work for the Bermuda company.

There are no restrictions with respect to remuneration for short-term work permit holders. Permissible activities are limited to those duties which the short-term work permit holder is contracted to perform and about which details were provided in the work permit application.

4 Is work authorisation or immigration permission needed to give or receive short-term training?

An individual can enter Bermuda for less than 21 business days without a work permit for training in techniques and work practices, provided that the training is conducted by a company affiliated by an ownership relationship and that the training is limited to observation, familiarisation and classroom instruction. Training in other circumstances will require immigration permission (either via a short-term work permit or a periodic work permit).

5 Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?

As of 1 March 2014, Bermuda entry visas and visa waivers are not required for tourist and business visitors and work permit holders. It should be noted, however that travellers who require a multiple re-entry visa (MRV) from the UK, US or Canada will not be landed in Bermuda without presenting the valid MRV upon arrival in Bermuda.

Long-term transfers

6 What are the main work and business permit categories used by companies to transfer skilled staff?

The three primary, non-temporary business permit categories are as follows.

Standard work permit

The purpose of a standard work permit is to allow all organisations in Bermuda to employ foreign nationals provided that they can demonstrate that a Bermudian, spouse of a Bermudian or PRC holder was not suitably qualified or available to be hired. Employers may apply for standard work permits for a period of one to five years.

Employers are permitted to apply for standard work permits for jobs that are in the open, special or restricted category. Applications for standard work permits are not allowed for closed category jobs. Closed category jobs include, but are not limited to, labourers, salespeople and receptionists. Restricted category jobs include, but are not limited to, bank tellers, bartenders, administrative assistants, general masons and photographers. These categories are generally designed to protect the local workforce.

Global work permit

The global work permit allows a person who is already employed by a global company in another jurisdiction to transfer to the Bermuda office without the requirement to advertise the position so long as the position being filled is not a pre-existing position. Global work permits are granted for periods of time similar to standard permits (ie, one to five years). However, if an employer wishes a global work permit holder to continue working in Bermuda after the expiry of his or her global work permit, he or she will be required to apply for a standard work permit.

Applications will be automatically approved in respect of individuals who have been employed for longer than one year and who earn a gross salary greater than Bda\$125,000 per year. Applications in respect of individuals employed for less than one year and those earning less than Bda\$125,000 will be considered on a case-by-case basis and approval will depend substantially on demonstrating that the addition of the global work permit holder will add value to Bermuda. A global work permit is not applicable to positions listed in the closed or restricted categories.

New business work permit

A new business work permit allows an exempted company (as defined in the Companies Act 1981) that is new to Bermuda to receive automatic approval of work permits for the first six months of obtaining the first new business work permit. There is no need to advertise the positions (which is the requirement of the standard work permit). New 114B companies to Bermuda (as defined in the Companies Act 1981) will be granted new business work permits – however, these will be limited to five new business work permits within the first six months of obtaining the first new business work permit. New business work permit holders may be employed in any job category provided that their position is not an entry-level position, a graduate position or trainee position or specified in a closed or restricted category (see below). However, if the new business work permit holder falls within a job category where a statutory council must be consulted this must still be done.

7 What are the procedures for obtaining these permissions? At what stage can work begin?

Standard work permit applications require the employer (who must be a Bermuda-based individual or company) to:

- advertise the vacancy in Bermuda as per requirements in the Policy;
- properly consider any Bermudian, spouse of Bermudian or PRC holder who meets the minimum qualifications of said advertisement;
- with the assistance of the work permit applicant, complete the relevant work permit application form and submit all necessary and relevant documentation; and

- where necessary, send the application to the relevant statutory body regulating the profession of the applicant (eg, doctors and lawyers).

Work cannot begin until the application has been approved by the Department of Immigration.

With respect to global work permits and new business work permits, if employers are able to qualify for the waiver of advertising as per the Policy, the first two steps identified above do not need to be followed. The employer need only complete the relevant work permit application form and submit all necessary documentation.

8 What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?

One to five years. Renewal permits can be applied for when standard work permits expire – as long as all the relevant requirements of the Policy continue to be met. The general restriction of work permit holders not working in Bermuda for longer than a six-year period was removed by the current government.

9 How long does it typically take to process the main categories?

It takes 20 working days for standard work permits and 10 working days for global or new business work permits. These periods are subject to change if the Department of Immigration experiences a high volume of submissions.

10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?

Employers and employees have certain obligations with respect to social insurance contributions, payroll tax, pension and medical insurance. Employers must ensure that the employee has the legislative minimum health insurance cover (although it is common for corporate employers to provide enhanced insurance coverage), pension and social insurance. Accommodation is optional for employers to arrange and pay for. Employees typically find their own place of residence. Some (typically corporate) employees receive a housing allowance at the option of the employer.

11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?

The Policy is fairly detailed and provides certain objective criteria for eligibility for the various applications. However, the Policy cannot be described as entirely objective.

The Policy itself states that the Minister may exercise his or her discretion as per the immigration legislation to waive specific policies upon written request or justification for the same (the Minister has no discretion to waive any fees). This is particularly the case in respect of specialised roles where there is a known shortage of Bermudians, spouses of Bermudians and PRC holders. In this way, there is flexibility within the Policy to accommodate complicated cases.

In practice the Minister and the board, which review the applications, do possess discretion with respect to interpretation of various issues. For example, if a Bermudian, spouse of a Bermudian or PRC holder has applied for the job upon advertising and has been refused the job in favour of the work permit applicant, the board and the Minister will exercise subjective analysis as to whether the consideration of the Bermudian, spouse of a Bermudian or PRC holder was fair.

It should also be noted that if an application is refused, the application can be appealed to the Minister.

12 Is there a special route for high net worth individuals or investors?

Under the global entrepreneur work permit, the Minister will grant a permit to an individual for a one-year period to work and reside in Bermuda (in respect to an exempted company or section 114B start-ups), if he or she is satisfied that the applicant is a bona fide investor or business person who is likely to domicile a company in Bermuda. The work activities may include business planning, seeking appropriate government or regulatory approvals, meeting compliance or financial requirements or raising capital.

High net worth individuals are able to apply for permission to reside on an annual basis, but such permission does not permit them to work in Bermuda.

13 Is there a special route for highly skilled individuals?

There is no special application for highly skilled individuals. Employers of highly skilled individuals may, however, be able to seek a waiver to the requirement to advertise the position on the following basis:

- that the applicant is uniquely qualified for the position;
- the position would not exist in Bermuda if it were not for the applicant filling the job;
- the success of the business would be detrimentally affected if the person were to leave the business; or
- the employee is integral and key to income-generation.

It should be noted that the posts of CEO and other chief officers are automatically granted waivers from advertising.

14 Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?

There is no special route for high net worth individuals for residence permission in Bermuda.

Economic citizenship and investment visas have been initially investigated and discussed at government level as an initiative to attract foreign investment in Bermuda, but such discussions have not progressed further.

15 Is there a minimum salary requirement for the main categories for company transfers?

There are no minimum salary requirements for the main categories for company transfers.

However, if the individual moving to Bermuda wishes to bring dependants to Bermuda, there are minimum salary requirements that must be proven.

Upon application, sponsored dependants of the work permit holder may be given permission to reside with the work permit holder and seek employment provided that the sponsor submits proof of financial support for the sponsored dependants. The following thresholds must be met:

- a two-person household requires remuneration of Bda\$60,000 per annum;
- a three-person household requires remuneration of Bda\$100,000 per annum; and
- a household with four or more persons requires remuneration of Bda\$125,000 per annum.

16 Is there a quota system or resident labour market test?

There is no quota system in Bermuda.

As discussed above, all positions (unless the employer meets the requirements to seek a waiver to the requirement to advertise) must be advertised. If a Bermudian, spouse of a Bermudian or PRC holder applicant meets the requirements of the advertised position, such an applicant should be interviewed. The results of any interviews must be included with the work permit application submission.

17 Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?

No.

18 What is the process for third-party contractors to obtain work permission?

Work permits must be obtained by the Bermuda employer. If someone is required to work as a contractor or consultant for another company or individual, that other company or individual must also apply for its own work permit identifying that the employee will be working as a contractor or consultant.

19 Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?

Formal assessments or testing to confirm skills and qualifications are not required. It is the responsibility of the employer to provide a written declaration in the application form that it has thoroughly screened the applicant and to the best of its knowledge and belief the applicant is of good character, possesses the qualifications purported in the application, is in good health and does not have a criminal record.

The Policy does, however, state that the Minister shall consult the statutory body that regulates matters dealt with by that profession. A full list can be found in the Policy and includes, but is not limited to, statutory bodies relating to architects, lawyers, dentists, nurses, psychologists, accountants and engineers.

Extensions and variations**20 Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?**

Tourists are unable to apply for a work permit while physically in Bermuda. This does not prevent the tourist visitor from returning to his or her home country and thereafter applying for a Bermuda work permit.

A business visitor can apply for extensions beyond 21 days. This is done by way of application.

A business visitor can apply for a short-term work permit if it becomes obvious that the activities being conducted fall outside the permitted activities under the business visitor policy. It would, however, be advisable for the employer to identify at the outset whether a short-term work permit is needed based on the anticipated activities.

At the conclusion of a short-term work permit for between three and six months, the holder will be expected to leave Bermuda, unless an extension has been sought within the proper processing period. Short-term work permit holders will not normally be granted permission to reside and seek employment.

A short-term work permit holder can, by way of application, seek to obtain a standard work permit. This must be done within 45 days of obtaining the short-term work permit. An explanation must also be provided as to why the standard work permit application was not made at the outset.

21 Can long-term immigration permission be extended?

Yes, indefinitely for up to five years with each application. There is no requirement to leave as long as all requirements as to advertising are met upon renewal (or alternatively a waiver is sought).

22 What are the rules on and implications of exit and re-entry for work permits?

Persons with permission are required to carry the document granting said permission when they travel. Otherwise they may be subject to fines – they are not at risk of being denied entry into Bermuda.

Dependants must also carry re-entry documents when exiting and re-entering Bermuda.

23 How can immigrants qualify for permanent residency or citizenship?

The Incentives for Job Makers Act 2013 and amendments to the Act in 2013 sought to make it easier for companies to obtain work permit exemptions for certain senior executives and for certain senior executives to be eligible to apply for permanent residency.

The employing company must first obtain designation as a company whose senior executives can apply for exemption. This involves having to show that the company has at least 10 Bermudians on its staff, that Bermudians are employed at all levels of the company and that entry level positions are available for Bermudians together with development programmes and promotion possibilities for Bermudians.

Where a designation is granted to a company, a qualifying senior executive of that company is then eligible to apply for exemption. The exemption application must demonstrate that:

- the applicant is indeed a person in a senior executive position;
- the applicant is responsible for making decisions that are critical to the continuity of the company in Bermuda;
- the continued presence of jobs in Bermuda with the company for Bermudians must be dependent on the applicant remaining in Bermuda;
- the applicant will continue to be employed in the company for the duration of the exemption; and
- the company must continue to meet the requirements of the designated company.

Designation and exemption applications cost Bda\$20,000.

A qualifying exempt senior executive may apply for permanent residency at the appropriate time. Such an application involves having to demonstrate the following:

Update and trends

Commercial immigration is not currently being considered by the government.

Attempts have recently been made by the government to introduce 'Pathways to Status' legislation, but owing to public concern the progress of this draft legislation is now subject to further consultation and development. The general intent of 'Pathways to Status' is to set out a process by which certain qualifying individuals who have resided or worked in Bermuda for a certain number of years may be able to apply either for permanent residency or status.

- the applicant has been eligible for exemption for a period of at least 10 years (this involves showing that the designated employing company was also eligible as a designated company for a period of 10 years);
- the applicant has been ordinarily resident in Bermuda for a period of at least 10 years; and
- the applicant has been ordinarily resident in Bermuda during the two years immediately preceding the application.

The PRC application costs Bda\$25,000.

24 Must immigration permission be cancelled at the end of employment in your jurisdiction?

Employers are required to submit a written notice of termination to the Department of Immigration within seven working days of the work permit holder's last day of employment. The notice must identify, among other matters, the date on which the employee left or is planning on leaving the island and the reason for termination.

The employer must also return the work permit paper document and the work permit card to the Department of Immigration.

25 Are there any specific restrictions on a holder of employment permission?

A holder of employment permission is restricted from undertaking any duties or responsibilities not expressly approved and noted on his or her work permit. By way of example, an insurance broker cannot start working as a paid photographer for the employer or any other employer.

Work permit holders are able to advance their professional development through further studies without obtaining permission.

Work permit holders can be promoted. The employer must first obtain permission from the Department of Immigration. While the employer is not required to advertise the post externally before applying by letter for permission to promote or otherwise transfer an employee internally, evidence of consideration of internal Bermudian, spouse of Bermudian and PRC holder candidates must be submitted to the department.

The salary of a work permit holder can be changed. The Policy is silent regarding whether permission must be obtained regarding salary increases. The practical approach is that incremental salary adjustments do not require permission. Significant increases could be seen as a promotion and permission should be obtained.

A work permit holder can work for an additional employer, but each employer must obtain a work permit for the individual. A work permit cannot be transferred to another employer (unless the reason for the transfer relates to a merger, acquisition or amalgamation - in which case permission by way of letter must be obtained). The new employer must apply for a separate work permit.

It should be noted that a work permit holder has the ability to seek alternative employment without permission during the course of the work permit. However, the work permit holder is not normally permitted to change employers during the first two years of employment with an initial employer. Thereafter there is no limitation on the number of job changes.

Dependants

26 Who qualifies as a dependant?

Spouses (same sex or otherwise), long-term partners (same sex or otherwise - an affidavit swearing to a genuine and subsisting relationship will be required) and dependent children (under 18 or up to 25 if in full-time education) qualify as dependants.

Extended family applications can be made. However, as they fall outside the Policy they are decided at the Minister's discretion on a case-by-case basis. It will be essential that such dependants demonstrate they can independently financially support themselves or that the work permit holder has sufficient finances to support the additional family member.

27 Are dependants automatically allowed to work or attend school?

Spouses and partners of work permit holders who are in receipt of re-entry documents are automatically granted permission to seek employment but are still subject to work permit restrictions.

Dependants are permitted to attend school but permission to seek employment does not extend to children. Child dependants are required to make their own application for permission to seek employment when they turn 18.

28 What social benefits are dependants entitled to?

Children get free basic health coverage known as HIP.

Other matters

29 Are prior criminal convictions a barrier to obtaining immigration permission?

These are decided on a case-by-case basis. Factors considered include the severity and nature of the crime, number of convictions and how recently the offence occurred. Spent convictions such as driving violations will not normally be a barrier to obtaining a work permit.

30 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?

Employers and employees are subject to fines and cases of non-compliance may jeopardise future work permit applications for the employer.



BARRISTERS
& ATTORNEYS

Fozeia Rana-Fahy

franafahy@mjm.bm

4 Burnaby Street
Hamilton HM11
Bermuda

Tel: +1 441 294 3612
Fax: +1 441 292 9151
www.mjm.bm

Individuals may also have their work permits revoked and be subject to deportation.

31 Are there any minimum language requirements for migrants?

It is the responsibility of the employer to provide a written declaration in the application form that it has thoroughly screened the applicant and to the best of its knowledge and belief the applicant is of good character, possesses the qualifications purported in the application, is in good health and does not have a criminal record.

The Policy does, however, state that persons coming to work in Bermuda under the Portuguese Accord as well as those employed in the construction industry are required to have a working knowledge of the English language.

32 Is medical screening required to obtain immigration permission?

Medical screening did form part of the old immigration policy. This has now been removed. As referred to above, it is the responsibility of the employer to ensure that the applicant is in good health.

However, individuals who have ever resided for two months or more in a country on the WHO 'high risk of TB' list must submit a certificate of general good health from a doctor and an original chest X-ray with the work permit application.

33 Is there a specific procedure for employees on secondment to a client site in your jurisdiction?

As long as the particulars of employment, including, for example, the potential for secondment, are set out at the application stage, once approved the employee can carry out the full scope of said duties - whether at the employer's site or at a client site.

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