

THE IMMIGRATION (AMENDMENT) BILL
(No. XVIII of 2013)

Explanatory Memorandum

The main object of this Bill is to amend the Immigration Act in view of the increase in the number of cases where non-citizens marry citizens for the sole purpose of acquiring the status of a resident. The Bill provides that, in such cases, the non-citizen will not automatically acquire that status on marriage. He will, in the first instance, have to apply for a temporary spouse residence permit valid for 3 years, at the end of which he will be entitled to apply for a spouse residence permit which will be subject to such conditions as the Minister thinks fit to impose. A temporary dependent child residence permit and a dependent child residence permit will have to be applied for on behalf of any dependent child of the non-citizen who is to reside in Mauritius. The time during which a non-citizen is the holder of a temporary spouse residence permit will not be taken into account in determining whether he is entitled to apply for registration as a citizen.

2. As a consequence –

- (a) the Civil Status Act is being amended to provide that a non-citizen who wishes to marry a citizen will be required to comply with certain formalities and provide satisfactory evidence that he is not marrying the citizen solely for the purpose of acquiring the status of a resident;
- (b) the Non-Citizens (Employment Restriction) Act is being amended to provide that every work permit shall include a condition that the holder shall –
 - (i) not seek to remain in Mauritius after the expiry of the work permit;
 - (ii) not marry a citizen for the sole purpose of acquiring the status of a resident.

3. The opportunity is being taken to bring about certain other amendments to, *inter alia*, the Immigration Act, the Civil Status Act and the Mauritius Citizenship Act.

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ARRANGEMENT OF CLAUSES

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A BILL

To amend the Immigration Act to provide that a non-citizen will not have the status of resident solely by virtue of his marriage to a citizen of Mauritius and to amend other related enactments

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Immigration (Amendment) Act 2013.

2. Interpretation

In this Act –

“principal Act” means the Immigration Act.

3. Section 2 of principal Act amended

Section 2 of the principal Act is amended –

(a) in the definition of “permanent residence permit”, by inserting, after the word “section”, the words “5A or”;

(b) by inserting, in the appropriate alphabetical order, the following new definitions –

“dependent child residence permit” means a permit issued under section 9D, enabling the dependent child of a non-citizen to have the status of a resident;

“residence card” means a card issued under section 9;

“spouse residence permit” means a permit issued under section 9D, enabling the non-citizen spouse of a citizen to have the status of a resident;

“temporary dependent child residence permit” means a permit issued under section 9D, enabling the dependent child of a non-citizen to remain in Mauritius for a period of 3 years;

“temporary spouse residence permit” means a permit issued under section 9D, enabling the non-citizen spouse of a citizen to remain in Mauritius for a period of 3 years;

(c) by adding the following new definition, the full stop at the end of the definition of “vessel” being deleted and replaced by a semicolon –

“work permit” means a permit issued under the Non-Citizens (Employment Restriction) Act.

4. Section 5 of principal Act amended

Section 5 of the principal Act is amended –

(a) in subsection (1) –

(i) by repealing paragraph (c) and replacing it by the following paragraph –

(c) he married a citizen, and has not lost his status of resident, before the commencement of subsection (1A);

(ii) in paragraph (e) –

(A) by deleting the word “permission” and replacing it by the words “the status of a resident”;

(B) by deleting the words “to become a resident”;

(iii) by repealing paragraph (f) and replacing it by the following paragraph –

(f) he is the holder of a permanent residence permit, a residence permit, an occupation permit or a work permit;

(iv) in paragraph (i), by deleting the words “, dependent child or other dependant” and replacing them by the words “or dependent child”;

(b) by inserting, after subsection (1), the following new subsection –

(1A) Where a non-citizen marries a citizen on or after the commencement of this subsection, he shall only acquire the status of a resident upon being granted a spouse residence permit pursuant to section 9D.

(c) in subsection (2), by deleting the words “grant permission to any person to become a resident” and replacing them by the words “, subject to section 6, grant to a person the status of a resident”.

5. Section 5A of principal Act amended

Section 5A of the principal Act is amended –

(a) in subsection (1), by adding the following new paragraph, the full stop at the end of paragraph (e) being deleted and replaced by a semicolon –

(f) he is a person who, in the Minister’s opinion, is a fit and proper person to be granted that status.

(b) by inserting, after subsection (2), the following new subsection –

(3) A person referred to in subsection (1)(f) shall not be granted the status of permanent resident for a period exceeding 10 years.

6. Section 6 of principal Act amended

Section 6 of the principal Act is amended –

(a) in subsection (2), by inserting, after the words “section 5(1)(c)”, the words “or 5(1A)”;

(b) in subsection (5), by inserting, after the words “subsections”, the words “(1A), (1B),”.

7. Section 8 of principal Act amended

Section 8 of the principal Act is amended, in subsection (1), by inserting, after paragraph (d), the following new paragraph –

(da) persons convicted of an offence under this Act;

8. Section 9 of principal Act amended

Section 9 of the principal Act is amended –

(a) in the heading, by deleting the words “**Permanent residence permits and residence permits**” and replacing them by the words “**Permits and residence cards**”;

(b) in subsection (1), by deleting the words “The Minister” and replacing them by the words “Subject to section 9D, the Minister”;

(c) by inserting, after subsection (4), the following new subsection –

(4A) The immigration officer shall issue, in such form and manner as he may approve, a residence card to a person who has the status of resident pursuant to section 5(1).

(d) in subsection (5), by inserting, after the word “permit”, the words “, spouse residence permit or dependent child residence permit, or in pursuance of having the status of resident pursuant to section 5(1),”;

(e) by adding the following new subsection –

(6) For the avoidance of doubt, no period of residence in Mauritius in pursuance of a temporary spouse residence permit or temporary dependent child residence permit shall be taken into account for the purposes of the Mauritius Citizenship Act.

9. Section 9A of principal Act amended

Section 9A of the principal Act is amended –

(a) in subsection (1), by deleting the words “employer of a”;

(b) in subsection (4)(a), by inserting, after the words “occupation permit”, the words “on such terms and conditions as he may determine and”;

(c) by adding the following new subsection –

(9) Where, in relation to the holder of an occupation permit, the Minister is satisfied that it is in the public interest to do so, he may, in his absolute discretion, cancel his occupation permit.

10. Section 9B of principal Act amended

Section 9B of the principal Act is amended by adding the following new subsection –

(4) Where, in relation to the holder of a residence permit issued under this section, the Minister is satisfied that it is in the public interest to do so, he may, in his absolute discretion, cancel his residence permit.

11. New section 9D inserted in principal Act

The principal Act is amended by inserting, after section 9C, the following new section –

9D. Spouse residence permit and dependent child residence permit

(1) (a) Subject to subsection (2), a non-citizen who marries a citizen and intends to reside in Mauritius shall apply to the immigration officer for a temporary spouse residence permit.

(b) Where the non-citizen referred to in paragraph (a) has any dependent child who is a non-citizen, and intends that the child resides in Mauritius, he shall apply to the immigration officer for a temporary dependent child residence permit on behalf of that child.

(2) Where the holder of a work permit or occupation permit marries a citizen and intends to reside in Mauritius, he shall make an application under subsection (1) within 15 days before the expiry of the occupation permit or work permit, as the case may be.

(3) Where a person referred to in subsection (2) makes an application under subsection (1), he may remain in Mauritius pending the determination of the application.

(4) An application under subsection (1) shall –

- (a) be made in such form and manner as may be prescribed;
- (b) include such particulars, documents and other information as the immigration officer may require; and
- (c) be accompanied by such fee as may be prescribed.

(5) The immigration officer shall, within 7 working days of receipt of the duly completed application and subject to subsection (4), issue to the applicant, for a period of 3 years and on such terms and conditions as he may determine –

- (a) a temporary spouse residence permit; or
- (b) where applicable, a temporary spouse residence permit, together with a temporary dependent child residence permit.

(6) An application for –

- (a) a temporary spouse residence permit under subsection (1) shall not be entertained where the applicant is a prohibited immigrant; or
- (b) a temporary dependent child residence permit under subsection (1) shall not be entertained where the applicant or the child is a prohibited immigrant.

(7) The holder of a temporary spouse residence permit who intends to continue to reside in Mauritius may, not later than one month before the expiry of the period of 3 years specified in subsection (5), apply to the Minister –

- (a) for a spouse residence permit to become a resident; and
- (b) where applicable and on behalf of a dependent child who is already the holder of a temporary dependent child residence permit, for a dependent child residence permit to enable that child to become a resident.

(8) An application under subsection (7) shall –

- (a) be made in such form and manner as may be prescribed;
- (b) include such information, document and particulars as the Minister may require; and
- (c) be accompanied by such fee as may be prescribed.

(9) The Minister may, in his absolute discretion, on receipt of a duly completed application under subsection (7), issue to the applicant, on such terms and conditions as he may determine –

- (a) a spouse residence permit; or
- (b) a spouse residence permit, together with a dependent child residence permit.

(10) (a) Where, in relation to the holder of a spouse residence permit, a temporary spouse residence permit, a dependent child residence permit or a temporary dependent child residence permit, the Minister is

satisfied that it is in the public interest to do so, he may, in his absolute discretion, cancel the permit.

(b) Where the Minister cancels a spouse residence permit or temporary spouse residence permit under paragraph (a), any dependent child residence permit or temporary dependent child residence permit issued pursuant to the same application shall automatically lapse.

12. Section 10 of principal Act amended

Section 10 of the principal Act is amended, in subsection (1), by deleting the figure "20,000" and replacing it by the figure "100,000".

13. Section 10A of principal Act amended

Section 10A of the principal Act is amended –

- (a) in the heading , by inserting, after the word "**residence**", the words "**or occupation**";
- (b) by inserting, after the word "residence", the words "or occupation";
- (c) by deleting the figure "50,000" and replacing it by the figure "100,000".

14. New section 16A inserted in principal Act

The principal Act is amended by inserting, after section 16, the following new section –

16A. Powers of immigration officer

Notwithstanding any other enactment, the immigration officer may, in order to secure compliance with this Act, take such measures as he may consider to be appropriate and may, in particular –

- (a) arrest and detain –
 - (i) any prohibited immigrant; or
 - (ii) any non-citizen who has committed or is committing, or whom he reasonably suspects of having committed or to be committing, an offence under this Act;

- (b) investigate any matter pertaining to a marriage between a citizen and a non-citizen where the non-citizen is the holder of a temporary spouse residence permit or a spouse residence permit;
- (c) for the purpose of an investigation under paragraph (b), require –
 - (i) a person who has been issued with a temporary spouse residence permit, a spouse residence permit, a temporary dependent child residence permit or a dependent child residence permit to appear before him for examination at such place and time as he may determine; or
 - (ii) a person who has been issued with a temporary spouse residence permit or a spouse residence permit to produce or submit to him such document as he may require.

15. Section 22 of principal Act amended

Section 22 of the principal Act is amended –

- (a) in paragraph (a), by inserting, after the words “ Mauritius,”, the words “or on being required under section 16A”;
- (b) in paragraph (b), by inserting, after the words “question put to him”, the words “or to produce or submit any document”;
- (c) by inserting, after paragraph (c), the following new paragraphs –
 - (ca) without reasonable excuse, remains in Mauritius where he does not hold the status of citizen, permanent resident, resident or exempted person;
 - (cb) without reasonable excuse, remains in Mauritius where his entry visa, residence permit, occupation permit or permit issued under section 9D has expired or been cancelled;
 - (cc) having ceased to be an exempted person, remains, without reasonable excuse, in Mauritius;
- (d) by deleting the figure “10,000” and replacing it by the figure “100,000”.

16. Section 23 of principal Act amended

Section 23 of the principal Act is amended by deleting the figure "2,000" and replacing it by the figure "10,000".

17. Consequential amendments

(1) The Civil Status Act is amended , in section 19A –

- (a) in subsection (2)(a)(ii), by inserting, after the word "publication", the words "pursuant to an entry visa issued by the immigration officer for the purpose of the marriage, a residence permit, an occupation permit or a work permit";
- (b) by inserting, after subsection (2), the following new subsection –

(2A) A non-citizen referred to in subsection (1) shall –

- (a) make an application, in such form as may be prescribed, for the publication of the marriage;
- (b) attach to the application –
 - (i) an affidavit sworn before the Master and Registrar, affirming that he is not marrying the citizen solely for the purpose of acquiring the status of a resident; and
 - (ii) affidavits from 2 citizens of Mauritius who are known to the future spouses but not related to either of them, nor providing them with financial support, affirming that, to the best of their knowledge, the non-citizen is not marrying the citizen solely for the purpose of acquiring the status of a resident.

(2) The Mauritius Citizenship Act is amended –

- (a) in section 5(1)(c), by deleting the words “continuous period of 5 years” and replacing them by the words “period of 5 years (without having spent more than an aggregate of 450 days outside Mauritius during that period)”;
- (b) in section 7, by repealing subsection (2) and replacing it by the following subsection –

(2) Where a non-citizen is or was married to a citizen of Mauritius, he may be registered as a citizen of Mauritius if he satisfies the Minister that –

- (a) he has lived with his spouse under the same conjugal roof in Mauritius, in pursuance of a spouse residence permit issued under the Immigration Act, for a period of not less than 4 years immediately preceding the date of his application for registration; and
- (b) he has not spent more than 240 days outside Mauritius during the period of 4 years.

- (c) in section 9 –

- (i) in subsection (1) –

- (A) by repealing paragraph (c) and replacing it by the following paragraph –

- (c) he has –

- (i) resided in Mauritius for a period of 7 years immediately preceding his application;
- (ii) not, during the period of 7 years immediately preceding his application, spent more than 630 days outside Mauritius; and
- (iii) not, during the 12 months immediately preceding his

application, spent more than 90 days outside Mauritius;

(B) by repealing paragraph (d);

(ii) in subsection (2) –

(A) in paragraph (a) –

(I) by deleting the word “continuous”; and

(II) by deleting the words “subsection (1)(c)” and replacing them by the words “subsection (1)(c)(iii)”;

(B) in paragraph (b) –

(I) by deleting the word “aggregate”;

(II) by deleting the words “(1)(d)” and replacing them by the words “(1)(c)(i) and (ii)”;

(iii) in subsection (3), by deleting the words “and (d)”.

(3) The Non-Citizens (Employment Restriction) Act is amended, in section 4(2), by inserting, after paragraph (a), the following new paragraphs –

(aa) Every permit issued under this section shall be issued subject to the condition that the non-citizen to whom the permit is issued shall –

(i) not remain, or seek to remain, in Mauritius when the permit is no longer valid, unless another permit is issued in relation to him;

(ii) not marry a citizen of Mauritius for the sole purpose of becoming a resident of Mauritius.

(ab) Notwithstanding any other enactment, a non-citizen who contravenes the condition specified in paragraph (aa) shall be deemed to be a prohibited immigrant for the purposes of the Deportation Act and of the Immigration Act.

(4) The Employment (Non-Citizens) (Restriction) Exemptions Regulations 1970 are amended –

(a) in regulation 3, by revoking paragraph (a) and replacing it by the following paragraph –

(a) is the holder of a temporary spouse residence permit or a spouse residence permit issued under the Immigration Act;

(b) in the Appendix, by revoking item 1 in Part I.

18. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.
