

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE IMMIGRATION LAW (2009
REVISION) TO EXEMPT FROM THE TERM LIMIT PROVISIONS OF
THE LAW PERSONS WHO ARE EMPLOYED TO CARE FOR
HANDICAPPED PERSONS, ELDERLY PERSONS AND SICK PERSONS;
AND TO MAKE PROVISION FOR INCIDENTAL AND CONNECTED
MATTERS**

THE IMMIGRATION (AMENDMENT) (NO. 2) BILL, 2010

MEMORANDUM OF OBJECTS AND REASONS

This Bill amends the Immigration Law (2009 Revision).

Clause 1 of the Bill provides the short title of the legislation.

Clause 2 amends section 2 of the principal Law to insert new definitions.

Clause 3 amends section 15 of the principal Law to make provision for appeals to the Immigration Appeals Tribunal against decisions made in respect of the acquisition and revocation of a Certificate for Specialist Caregivers.

Clause 4 amends section 30 of the principal Law to exclude an employee named in a Certificate for Specialist Caregivers and his dependants from eligibility to apply for permanent residence.

Clause 5 inserts into the principal Law a new section 37C to provide for the acquisition and revocation of a Certificate for Specialist Caregivers.

THE IMMIGRATION (AMENDMENT) (NO. 2) BILL, 2010

ARRANGEMENT OF CLAUSES

1. Short title
2. Amendment of section 2 of the Immigration Law (2009 Revision) - definitions
3. Amendment of section 15 - appeals from decisions of Boards and Chief Immigration Officer
4. Amendment of section 30 - persons legally and ordinarily resident in the Islands for at least eight years
5. Insertion of section 37C - Certificate for Specialist Caregivers

CAYMAN ISLANDS

A BILL FOR A LAW TO AMEND THE IMMIGRATION LAW (2009 REVISION) TO EXEMPT FROM THE TERM LIMIT PROVISIONS OF THE LAW PERSONS WHO ARE EMPLOYED TO CARE FOR HANDICAPPED PERSONS, ELDERLY PERSONS AND SICK PERSONS; AND TO MAKE PROVISION FOR INCIDENTAL AND CONNECTED MATTERS

ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Immigration (Amendment) (No. 2) Law, 2010.

Short title

2. The Immigration Law (2009 Revision), in this Law referred to as the “principal Law”, is amended in section 2 by inserting, in the appropriate alphabetical sequence, the following definitions -

Amendment of section 2 of the Immigration Law (2009 Revision) - definitions

“elderly person” means a person over the age of sixty-five years;

“handicapped person” means a person who suffers from a permanent physical or mental disability which has been documented by a doctor and who as a result of this disability is dependent on the care of a specialist caregiver;

“sick person” means a person who suffers from an illness which has been certified by a doctor as not being short-term in nature and as a result of which the person is dependent on the care of a specialist caregiver;

“specialist caregiver” means a person who, in the capacity of domestic helper, nurse, nanny or in some other care-giving capacity, cares for an elderly person, a handicapped person or a sick person;”.

Amendment of section 15 - appeals from decisions of Boards and Chief Immigration Officer

3. The principal Law is amended in section 15(1) by deleting the words “under section 42(5)” and substituting the words “under section 37C or 42(5)”.

Amendment of section 30 - persons legally and ordinarily resident in the Islands for at least eight years

4. The principal Law is amended in section 30(1) -

- (a) by deleting the word “or” at the end of paragraph (ba); and
- (b) by inserting after paragraph (ba) the following paragraph -

“(bb)an employee named in a Certificate for Specialist Caregivers; or”.

Insertion of section 37C - Certificate for Specialist Caregivers

5. The principal Law is amended by inserting after section 37B the following section -

“Certificate for Specialist Caregivers

37C. (1) The employer or former employer of a person who meets the criteria contained in subsection (2) may apply to the Work Permit Board or the Chief Immigration Officer for the grant of a Certificate for Specialist Caregivers in respect of that person.

(2) The criteria mentioned in subsection (1), in respect of a person’s eligibility for employment under a Certificate for Specialist Caregivers, are as follows -

- (a) (i) the employee or prospective employee shall hold a final work permit;
- (ii) where the employee or prospective employee held a final work permit which has expired, the application for employment under a Certificate for Specialist Caregivers may be made if the employee or prospective employee is otherwise legally resident in the Islands;
- (iii) where the employee or prospective employee held a final work permit which has expired and the employee or prospective employee has departed the Islands, the application for employment under a Certificate for Specialist

Caregivers shall be made within one year from the date of that departure;

- (iv) the employee or prospective employee shall hold a final non-renewable work permit issued under section 52(10); or
- (v) where the employee or prospective employee held a final non-renewable work permit issued under section 52(6) which has expired, the application for employment under a Certificate for Specialist Caregivers may be made if the employee or prospective employee is otherwise legally resident in the Islands as a visitor;

and in relation to subparagraphs (i) to (v), such final work permit or final non-renewable work permit is or was for employment by an employer (including, the Government or a nursing home approved by the Governor) as a domestic helper, nurse or nanny, or in some other care giving capacity;

- (b) the employee or prospective employee is or was employed with the employer or former employer making the application, as a domestic helper, nurse or nanny, or in some other care giving capacity, for at least three years immediately prior to the application;
- (c) the employee or prospective employee is or was employed for the purpose of caring for a sick person, elderly person or handicapped person; and
- (d) the employee or prospective employee is in good health and possesses health insurance coverage.

(3) Where, having received an application under subsection (1), the Work Permit Board or the Chief Immigration Officer, as the case may be, is satisfied that the criteria in subsection (2) are met, the Work Permit Board or the Chief Immigration Officer, having regard to the criteria contained in section 44(3) may, upon payment of the prescribed fee, issue a Certificate for Specialist Caregivers, valid for five years, to take effect upon the expiry of the

employee's final work permit or final non-renewable work permit or, in the event that the employee's final work permit or final non-renewable work permit has expired, upon the date of the decision of the Board or the Chief Immigration Officer; and such Certificate shall be renewable for a period of five years, on application to the Board or the Chief Immigration Officer and upon payment of the prescribed fee, if the criteria contained in subsection (2) remain satisfied.

(4) Upon the issue of a Certificate for Specialist Caregivers the name of the person being cared for shall be inscribed on the Certificate.

(5) A Certificate for Specialist Caregivers shall entitle the employee named in it to continue to work, or return to work, for the employer with whom he has been, or was, employed prior to the expiry of his final work permit in the capacity of a domestic helper, nurse or nanny or in any other care giving capacity, caring for the sick person, elderly person or handicapped person named in the Certificate.

(6) Where, during the currency of a final work permit or a final non-renewable work permit, an application has been made to the Work Permit Board or the Chief Immigration Officer for the issue of a Certificate for Specialist Caregivers to commence immediately upon its expiration, or an application for the renewal of a Certificate has been made prior to its expiry, then if such application -

- (a) has not yet been determined by the Work Permit Board or the Chief Immigration Officer; or
- (b) has been refused by the Work Permit Board or the Chief Immigration Officer and that refusal has been appealed under section 15 to the Immigration Appeals Tribunal within the prescribed time for doing so,

notwithstanding the fact that the final work permit, final non-renewable work permit or the Certificate for Specialist Caregivers has expired, it shall not be an offence for the employee to whom the application relates to continue to be engaged in gainful occupation of the same kind and on the same terms and conditions of the final work permit, the final non-renewable work permit or the Certificate for Specialist

Caregivers while he awaits a notification of the determination of his application or his appeal.

(7) A Certificate for Specialist Caregivers shall not confer any rights on the employee's spouse or dependants with respect to residence and employment rights in the Islands.

(8) Any period of residence in the Islands in employment authorized by a Certificate for Specialist Caregivers shall be deemed not to be legal and ordinary residence for the purposes of sections 29 and 30.

(9) An application for the renewal of a Certificate for Specialist Caregivers may be refused and a Certificate may be revoked by the Work Permit Board or the Chief Immigration Officer if -

- (a) the employee named in the Certificate ceases to be employed by the employer named in the Certificate;
- (b) the person named in the Certificate as being cared for dies or ceases to be a sick person or a handicapped person; or
- (c) in the opinion of the Work Permit Board or the Chief Immigration Officer, any of the matters referred to in section 38(1)(a) to (j) apply to the employee named in the Certificate.

(10) Upon the expiry of a Certificate for Specialist Caregivers, and where no application is made for its renewal, or an application is made but is refused and no appeal has been made, the employee named in the Certificate shall leave the Islands and neither the Board nor the Chief Immigration Officer shall grant or renew a work permit for him for not less than one year after he has left the Islands.”

The Immigration (Amendment) (No. 2) Bill, 2010

Passed by the Legislative Assembly the _____ day of _____, 2010.

Speaker.

Clerk of the Legislative Assembly.