

CHAPTER 47:02
EMPLOYMENT OF NON-CITIZENS
ARRANGEMENT OF SECTIONS

SECTION

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Act 11, 1981,
Act 15, 1981,
S.I. 59, 1983,
Act 19, 1992.

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 provide for matters incidental thereto.

[Date of Commencement: 1st June, 1983]

1. Short title

This Act may be cited as the Employment of Non-Citizens Act.

2. Interpretation

In this Act, unless the context otherwise requires-

"**authorized officer**" means a person appointed under section 3 to be an authorized officer for the purposes of this 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 Employment Act;

"**non-citizen**" means a person other than-

- (a) a citizen of Botswana; or
- (b) a person or a member of a class of persons declared by regulations made under this

Act not to be a non-citizen 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.

3. Authorized officers

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

4. Control of employment, etc., of non-citizens

- (1) No non-citizen shall engage 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 to engage in 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 not exceeding P1 000 or to imprisonment for a term not exceeding 12 months, or to both.
- (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. Applications for work permits and renewals thereof and determination of same

(1) An application for a work permit, or the renewal or the variation 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 appropriate Regional Immigrants Selection Board established in accordance with section 18 of the Immigration Act, and hereinafter in this Act referred to as "the Board".

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

(3) Any person who has been required to submit to examination under subsection (2) may be examined by the authorized officer in question, 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 put before it under subsection (1), and shall, as the case may be, either issue a work permit, renew the existing work permit, approve the variation of the work permit, wholly or in part, or reject the application, in which last case the authorized officer 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 is 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 the 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 a 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 not exceeding P500 or to imprisonment for a term not exceeding six months, or to both; or
- (b) contravenes subsection (3) or, in connection 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 not exceeding P1 500 or to imprisonment for a term not exceeding 18 months, or to both.

6. Form and terms of and conditions attached to work permits

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.

7. Appeals in connection with work permits (1) An applicant for a work permit, or the renewal or the variation 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 or that term or condition to the National Immigrants Selection Board established under section 18 of the Immigration Act and hereinafter referred to as "the National Board".

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

(3) The National Board shall consider every appeal lodged with it in terms of subsection (1), and shall-

- (a) in the case of a decision to reject an application, either dismiss the appeal or allow it, in which last case it shall forthwith issue a work permit or renew the existing work permit containing such terms and subject to such conditions specified in the permit, as the National Board may determine; or
- (b) in the case of an appeal against a decision as to any term included in or any condition attached to a work permit, either dismiss the appeal or allow it, in which last case the National Board shall rescind the term or condition or amend it, and shall amend the work permit accordingly.

(4) Any person aggrieved by any decision of the National Board may appeal therefrom to the Minister, whose decision thereon shall be final.

8. Cancellation and compulsory variation of work permits

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

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

(2) The holder of a work permit on whom a notice 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 notice, 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 notice, 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 not exceeding P100 or to imprisonment for a term not exceeding one month, or to both.

9. Work permits to be returned on expiry

(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 not exceeding P100 or to imprisonment for a term not exceeding one month, or to both.

10. Exemption from section 4(1)

(1) The Minister may, by order published in the *Gazette*, exempt any person or every member of any class of persons specified therein 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 is 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 connection 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 not exceeding P1 500 or to imprisonment for a term not exceeding 18 months, or to both.

11. Appeals in connection with certificates of exemption

(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.

(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. Cessation of validity of certificates of exemption

(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.

(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 not exceeding P100 or to imprisonment for a term not exceeding one month, or to both.

13. How to keep work permits or certificates of exemption

(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.

(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 not exceeding P100 or to imprisonment for a term not exceeding one month, or to both.

14. Power of officers to require production of work permits and certificates of exemption

(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.

(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 not exceeding P500 or to imprisonment for a term not exceeding six months, or to both.

15. Power of officers to examine persons in possession of work permits or certificates of exemption as to identity

(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 not exceeding P500 or to imprisonment for a term not exceeding six months, or to both; or
- (b) contravenes subsection (2) shall be guilty of an offence and liable to a fine not exceeding P1 500 or to imprisonment for a term not exceeding 18 months, or to both.

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

(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 not exceeding P100 or to imprisonment for a term not exceeding one month, or to both.

17. Replacement of work permits and certificates of exemption

(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

authorized officer.

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

18. Returns by employers of holders of work permits or certificates of exemption

(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.

(2) Any person who, without reasonable excuse, contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding P250 or to imprisonment for a term not exceeding three months, or to both.

19. Registers in respect of work permits and certificates of exemption

(1) The authorized officer 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.

(2) Each of the registers required to be kept under subsection (1) shall be in such form as may be prescribed and the authorized officer shall enter or cause to be entered therein such particulars as the Minister may require.

20. Minister to give directions in connection with carrying out functions under Act

(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.

(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.

21. Evidential presumption as to reasonable excuse

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.

22. Regulations

The Minister may make regulations for any matter required to be made by regulations under this Act or for the better carrying into effect of the purposes and provisions of this Act.

23. Power of exemption of Commissioner of Labour in emergency

(1) Where the Commissioner of Labour 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 provisions 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.

(2) Any order under this section may be issued either orally or in writing.