

NON-CITIZENS (EMPLOYMENT RESTRICTION) ACT

Act 15 of 1970 – 17 May 1973

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NON-CITIZENS (EMPLOYMENT RESTRICTION) ACT

1. Short title

This Act may be cited as the Non-Citizens (Employment Restriction) Act.

2. Interpretation

In this Act—

“authorised person” means any person referred to in section 5;

“identification number”, in relation to a non-citizen, means the identification number allocated to him by the immigration officer in accordance with section 9D (1) (a) (ii) or (2) of the Immigration Act;

“immigration officer” has the same meaning as in the Immigration Act;

“Minister” means the Minister to whom responsibility for the subject of employment is assigned;

“non-citizen” means any person other than a citizen of Mauritius;

“permit” means—

- (a) in relation to a person who is or is about to be employed by another, a permit in writing issued by the Minister to and in the name of that person and specifying the name of the employer;

“public sector agency” has the same meaning as in the Business Registration Act;

“resident” has the same meaning as in the Immigration Act.

[S. 2 amended by s. 38 (a) of Act 9 of 2015 w.e.f. 15 February 2016.]

3. Restriction on employment of non-citizens

(1) Subject to this Act, a non-citizen shall not—

- (a) engage in any occupation in Mauritius for reward or profit; or
- (b) be employed in Mauritius,

unless there is in force, in relation to him, a valid permit and he engages in the occupation, or is employed, in accordance with any condition which may be specified in the permit.

(2) —

(3) Subject to this Act, no person shall have a non-citizen in his employment in Mauritius without there being in force a valid permit in relation to that employment.

(4) Subject to this Act—

- (a) any non-citizen who engages in any occupation in Mauritius or is employed in Mauritius in contravention of subsection (1); and
- (b) any person who has in his employment in Mauritius a non-citizen in contravention of subsection (3),

shall commit an offence and shall, on conviction, be liable to a fine of not less than 25,000 rupees nor more than 50,000 rupees and to imprisonment for a term not exceeding 2 years.

(5) A non-citizen who—

- (a) is a resident; and
- (b) was engaged in any occupation or was employed in Mauritius on 17 May 1973,

may, notwithstanding subsection (1), engage in any occupation for reward or profit or be employed without a permit as long as he is resident in Mauritius.

(6) Notwithstanding subsections (1) and (2), a holder of an occupation permit issued under the Immigration Act, or a non-citizen who has been granted a permanent residence permit under section 5A of the Immigration Act, or is a member of the Mauritian Diaspora under the Mauritian Diaspora Scheme, or a person certified by the Managing Director of the Board of Investment to be a person involved in the business activities of the Smart City Scheme, prescribed under the Investment Promotion Act, may engage in any occupation for reward or profit, or be employed, without a permit issued under this Act during the period covered by the occupation permit or permanent residence permit, as the case may be.

[S. 3 amended by s. 3 of Act 38 of 2001; s. 21 (a) of Act 20 of 2002 w.e.f. 1 September 2002; s. 8 (a) of Act 21 of 2006 w.e.f. 1 October 2006; s. 25 of Act 17 of 2007 w.e.f. 22 August 2007; s. 19 (a) of Act 26 of 2012 w.e.f. 22 December 2012; s. 38 (b) of Act 9 of 2015 w.e.f. 23 October 2015.]

4. Work permits

(1) An application for a permit shall be made in accordance with the guidelines issued by the Ministry and shall be addressed to the Minister who may, in his absolute discretion, grant or refuse it.

(1A) The guidelines referred to in subsection (1) shall be available for consultation at the Ministry and shall be posted on the website of the Ministry.

(2) (a) Where the Minister grants an application for a permit, he shall issue the permit within 2 weeks of the effective date of the application for the permit and subject to such conditions as may be specified in the permit.

(b) For the purpose of paragraph (a) —

“effective date of the application” means the date by which all the documents and information specified in the application form are submitted.

(3) (a) This section shall not apply —

(i) to the holder of an occupation permit issued under the Immigration Act; or

(ii) to a non-citizen coming to serve in Government to service the public sector within the SERVICE TO MAURITIUS PROGRAMME for a period not exceeding 3 years and who is registered with the Board of Investment under the Investment Promotion Act.

(4) A permit shall be in such form as the Minister may approve and different forms may be approved in respect of different classes of persons or as the circumstances require.

(5) The Minister may, in writing, vary or cancel a permit.

[S. 4 amended by s. 21 (b) of Act 20 of 2002 w.e.f. 1 September 2002; s. 5 of Act 29 of 2004 w.e.f. 1 December 2004; s. 8 (b) of Act 21 of 2006 w.e.f. 1 October 2006; s. 24 of Act 18 of 2008 w.e.f. 19 July 2008; s. 19 (b) of 26 of 2012 w.e.f. 22 December 2012.]

4A. Use of identification number

(1) Every work permit issued under section 4 shall contain the identification number of the non-citizen.

(2) Notwithstanding any other enactment, every holder of a work permit —

(a) who is not required to be registered under the Business Registration Act shall, in respect of every transaction he makes in relation to his activities with a public sector agency, use and indicate on any document, whether electronically or otherwise, his identification number;

(b) who is required to be registered under the Business Registration Act shall, in respect of every transaction he makes —

(i) in relation to his business activities, use his business registration number in accordance with the Business Registration Act;

- (ii) in relation to any other activity with any public sector agency, use and indicate on any document, whether electronically or otherwise, his identification number.

(3) No public sector agency shall issue, whether electronically or otherwise, a document in respect of any transaction referred to in subsection (2) (a) or (b) (ii), unless the document contains the identification number of the person.

(4) Every public sector agency shall use and indicate in its records, whether electronically or otherwise, the identification number of every non-citizen with whom a transaction is carried out pursuant to subsection (2) (a) or (b) (ii) and in respect of whom a record is required to be kept.

(5) (a) The identification number allocated to a non-citizen referred to in subsection (2) (a) or (b) (ii) shall be the unique identification number of that person.

(b) The unique identification number of a non-citizen shall be the non-citizen's official identification number whenever reference is made to him.

(c) Any number of identification, other than the identification number, which is used by a public sector agency, shall—

- (i) be used by that public sector agency solely for internal purposes; and
- (ii) not appear on any document issued to any person.

(6) Any person who fails to comply with subsection (2) (a) or (b) (ii) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees.

(7) Any public sector agency which contravenes subsection (3), (4) or (5) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees.

[S. 4A inserted by s. 38 (c) of Act 9 of 2015 w.e.f. 15 February 2016.]

4B. Electronic register of work permits

The Ministry shall keep and maintain an electronic register of work permits referred to in section 4.

[S. 4B inserted by s. 38 (c) of Act 9 of 2015 w.e.f. 15 February 2016.]

4C. Sharing of information

(1) For facilitation purposes, the Ministry shall, through its electronic register, share with another public sector agency information relating to a non-citizen, his name and address, place of work, duration of permit and his date of arrival in, and date of departure from, Mauritius.

(2) No public sector agency shall disclose any information obtained pursuant to subsection (1) to a third party.

[S. 4C inserted by s. 38 (c) of Act 9 of 2015 w.e.f. 15 February 2016.]

5. Authorised persons

(1) The immigration officer, any police officer or any public officer authorised in writing by the Minister may take such steps as may be required to secure compliance with this Act.

(2) Where an authorised officer, other than a police officer in uniform, exercises any of his powers under this Act, he shall, if so required, produce a certificate of his authority so to act.

[S. 5 amended by s. 38 (d) of Act 9 of 2015 w.e.f. 15 February 2016.]

6. Production of permits

(1) Every permit shall be kept by the person to whom it is issued, and shall be produced to any authorised person on demand, or, within 3 days after the demand, at such police station as the authorised officer may specify at the time of the demand.

(2) Any person who fails without reasonable excuse or refuses to produce a permit as required under subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500 rupees and to imprisonment for a term not exceeding 3 months.

7. Power to grant exemptions

The Minister may prescribe that any person or class of persons shall be exempt, unconditionally or subject to such conditions as may be prescribed, from this Act.

8. Offences and penalties

Any person who—

- (a) makes any statement which he knows to be false for the purpose of procuring for himself or any other person the grant of a permit;
- (b) unlawfully uses a permit or causes or permits it to be so used;
- (c) obstructs, hinders or opposes an authorised person in the execution of his duty under this Act;
- (d) contravenes any condition imposed on him under section 7; or
- (e) contravenes any regulations made under this Act,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding 12 months.

[S. 8 amended by Act 5 of 1999.]

9. Evidence

(1) It shall be presumed upon the trial of any person for a contravention of section 3 (1) that the accused is a non-citizen unless the contrary is proved.

(2) It shall be presumed upon the trial of any person for a contravention of section 3 (3) that the person alleged to have been in employment in contravention of that subsection is a non-citizen unless the contrary is proved.

(3) In any proceedings against a non-citizen under this Act, the proof that he satisfies the requirements of sections 3 (5) (a) and (b) shall lie upon him.

10. Regulations

The Minister may make such regulations as he thinks fit for the purposes of this Act and, without prejudice to the generality of that power, for—

- (a) the establishment and maintenance of a register of persons to whom or in respect of whom permits have been issued;
 - (b) the issue to any person who is exempt from this Act of a certificate stating the nature of the exemption;
 - (c) the issue, amendment, surrender, replacement or cancellation of a permit and for the payment of fees by a person applying for a permit; and
 - (d) the making, with regard to any person to whom or in respect of whom a permit has been issued, of returns containing particulars of any change of circumstances affecting the accuracy of particulars furnished by that person.
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