

CHAPTER 62

CHAPTER 62 IMMIGRATION

NO 27 OF 1988 - AN ACT TO AMEND THE UNDESIRABLE IMMIGRANT ACT

NO 8 OF 1989 - AN ACT TO AMEND THE IMMIGRATION ACT

(Immigration Regulations 1972 – below)

Immigration (Amendment) Regulations 1996 (Gazette No. 2 Wednesday 3 April 1996)

NO 4 OF 1997 – AN ACT TO AMEND THE IMMIGRATION ACT

NO 5 OF 1998 – AN ACT TO AMEND THE IMMIGRATION ACT

CHAPTER 62

IMMIGRATION

1. This Act may be cited as The Immigration Act

PART I – PRELIMINARY

2. In this Act, unless the context otherwise requires-

“authorised port of entry”, “authorised airport” means a sea port or an airport notified by the Prime Minister in the Gazette to be an authorised port of entry for the purposes of this Act, and until otherwise notified includes Fua’amotu Airport, Nuku’alofa Harbour, Lifuka harbour Ha’apai, Neiafu Harbour Vava’u, and Niuatoputapu Harbour;

“child” means a legitimate or legitimated child or a stepchild or, in relation to its mother, an illegitimate child; and-

- (a) except for the purposes of section 7(1)(i) of this Act includes an adopted child, having been adopted in a manner recognised by law;
- (b) for the purposes of that paragraph includes such an adopted child as aforesaid, but only if-
 - (i) it was adopted in the Kingdom, or
 - (ii) it was adopted prior to the first entry in the Kingdom of its adoptor or adoptors;

“crew” includes every seaman on a vessel, and every person employed in the operation of an aircraft or in any service rendered to the crew or passengers of such aircraft while in flight;

“entry” means-

- (a) in the case of a person arriving by sea, disembarking in Tonga from the vessel in which he arrives; and
- (b) in the case of a person arriving by air at an authorised airport, leaving the precincts of such airport; and

(c) in the case of a person arriving by any other means, being within the territorial jurisdiction of the Kingdom:

Provided that it shall not include in any case an entry made for the purpose of complying with this Act or an entry expressly or impliedly sanctioned by an immigration officer for the purpose of any inquiry or detention under the provisions of this Act or, until the expiry of 7 days, an entry caused solely by stress of weather or the condition of a ship or aircraft;

“family” means wife and children under 18 years of age;

“immigration officer” means an immigration officer appointed under the provisions of section 3 of this Act, and includes the Principal Immigration Officer;

“Kingdom” means the Kingdom of Tonga;

“master” means in relation to a vessel, any person (except a pilot or Harbour Master) having for the time being control or charge thereof and in relation to an aircraft the captain thereof;

“passenger” means any person carried in a vessel or aircraft, other than the members of the crew;

“permit” includes any kind of permit or authorisation issued under the provisions of this Act;

“Principal Immigration Officer” includes an immigration officer to whom the Principal Immigration Officer has lawfully delegated powers under section 3 of this Act;

“prohibited immigrant” means a person declared to be a prohibited immigrant under section 8 of this Act;

“seaman” means an officer or member of the crew of a vessel;

“vessel” includes any ship or boat or other description of floating craft used in navigation;

“visitor” means a person arriving in the Kingdom for an intended stay of any period not exceeding 6 months.

PART II – APPOINTMENT AND POWERS OF IMMIGRATION OFFICERS

Appointment of Principal Immigration Officer

3. (1) The Prime Minister may, with the consent of Cabinet, appoint a Principal Immigration Officer and such other immigration officers as he may consider necessary for the proper carrying out of the provisions of this Act.
- (2) The Principal Immigration Officer may delegate in writing all or any of his powers, functions or duties under the provisions of this Act or of any Regulations made thereunder, either generally or in any area in the Kingdom, or for such periods or purposes as he may specify, to any immigration officer, and may at any time revoke or vary any such delegation:

Provided that no such delegation shall be deemed to divest the Principal Immigration Officer of all or any of his powers, functions or duties, and he may,

if he thinks fit, exercise and perform such powers, functions and duties, notwithstanding the fact that he has so delegated them.

Power of Prime Minister to issue directions

4. The Prime Minister with the consent of Cabinet may from time to time give the Principal Immigration Officer directions, not inconsistent with the provisions of this Act or of any Regulations made thereunder, as to the exercise of any powers, discretions or functions or the performance of any duties under this Act or any Regulations made thereunder and the Principal Immigration Officer and all other immigration officers shall comply with all such directions.

Powers of immigration officer

- 5 (1) For the purpose of exercising his powers and functions and carrying out his duties under this Act, any immigration officer may
- (a) without a search warrant, enter upon or into and search any ship, aircraft or vehicle in the Kingdom;
 - (b) interrogate any person who desires to enter the Kingdom, or any person whom he has reasonable grounds for believing to be a prohibited immigrant, or any person applying for extension of a permit or for exemption, or any person whom he reasonably believes can give material information regarding any such person as aforesaid, and may require any such person to produce such documents in his possession as may be necessary to enable the immigration officer to carry out his duties under this Act;
 - (c) require any person who desires to enter or leave the Kingdom to make and sign any prescribed form of declaration;
 - (d) require any person who desires to enter the Kingdom to submit to be examined by a Government medical officer, and to undergo, and to assist in the carrying out of, any test or investigation which such Government medical officer may require.
- (2) If any immigration officer has reasonable cause to suspect that any person has committed an offence against this Act or any Regulations made thereunder, or that the presence of any person in the Kingdom is unlawful, he may arrest such person without a warrant:
Provided that where the person arrested is a person whom the immigration officer has reasonable cause to suspect of being a prohibited immigrant and such person is a passenger or seaman on a ship, he may, if he consents, be handed over to the custody of the master of the ship until its departure from the Kingdom.
- (3) Any person who-
- (a) refuses or fails to answer lawfully and truthfully any question or inquiry put to him in the course of

interrogation under paragraph (b) of subsection (1) of this section; or

- (b) gives any answer which he knows or has reasonable cause to believe to be false or misleading to any such question or inquiry as aforesaid; or
- (c) when required to produce any document under paragraph (b) of subsection (1) of this section, refuses or fails to produce within a reasonable time any such document which it is in his power to produce, or produces any document which he knows or has reasonable cause to believe to be false or misleading,

shall be guilty of an offence against this Act.

- (4)
 - (a) All answers to questions lawfully put in interrogation and all documents produced , under paragraph (b) of subsection (1) of this section, shall be admissible in evidence, in relation to any matter arising under or connected with this Act or any Regulations made thereunder, in any proceeding to which this subsection applies.
 - (b) This subsection shall apply to-
 - (i) any civil proceedings;
 - (ii) any criminal proceedings in respect of any offence against subsection (3) of this section.
 - (c) Nothing in this subsection shall be construed as rendering any such answer or document inadmissible in evidence in any proceedings in which they would otherwise be admissible.

PART III – ENTRY INTO THE KINGDOM

Control of entry into the Kingdom

- 6. (1) No person other than a citizen of the Kingdom shall enter the Kingdom unless-
 - (a) he is in possession of a valid permit lawfully issued to him under the provisions of this Act; or
 - (b) he is exempted from the provisions of this section under the provisions of section 7 of this Act.
- (2) No person shall remain in the Kingdom after the expiry or cancellation of his permit.
- (3) Any person who contravenes the provisions of this section shall be guilty of an offence against this Act.

Persons entitled to enter without permit

- 7. (1) Subject to the provisions of this section, a person who satisfies the

Principal Immigration Officer that he comes into any of the following categories shall be entitled to enter the Kingdom without having obtained a permit under this Act-

- (a) a person who is a Tongan subject within the meaning of the nationality laws of the Kingdom;
- (b) a member of any visiting force within the meaning of any law for the time being in force regulating visiting forces present in the Kingdom;]
- (c) a person duly accredited as a diplomatic or consular representative to the Kingdom, and the family of such person;
- (d) a person upon whom the immunities and privileges referred to in part II or III of the Schedule to the Diplomatic Privileges Act have been conferred under that Act, and the family of such person;
- (e) any person employed in Government service entering the Kingdom in course of his employment, and the family of such member;
- (f) a member of the official staff of a person mentioned in paragraph (c) or (d) of this subsection, and the family of such member;
- (g) a member of the household of a person mentioned in paragraph (c), (d) or (f) of this subsection, and the family of such member;
- (h) a child under the age of 18 years both of whose parents are or whose parent is exempt under paragraph (a) of this subsection;
- (i) a student of any age both of whose parents are or whose only parent is resident in the Kingdom, who is re-entering the Kingdom on vacation from or on completion of studies at a university, university college, school or other educational establishment;
- (j) a person other than a person arriving in a privately owned yacht, who enters the Kingdom and leaves the Kingdom on the ship or aircraft on which he arrived immediately upon its departure;
- (k) any person to whom Cabinet grants exemption in writing under the signature of the Prime Minister.

(l) “A person who holds a current Tongan National Passport, subject to Section 31 of the Passport Act”. (inserted by Act No. 8 of 1989)

- (2) The burden of proof that any person is a person to whom this section applies shall lie upon that person.
- (3) (a) When any person referred to in subsection(1) of this section ceases to hold or enjoy the employment, appointment, status or privileges which entitled him under the provisions of this section to enter the Kingdom without a permit, he shall, for the purposes of this Act be deemed to be a person seeking to enter the Kingdom with effect

from the date when he ceased to hold such employment or appointment or enjoy such status or privileges, as the case may be. If on the expiration of 28 days from such date he shall not have been granted a permit under the provisions of this Act, his presence and the presence of his family and dependants shall thereupon become unlawful:

Provided that the provisions of this paragraph shall not apply to a person who at the time of ceasing to hold or enjoy the employment, appointment, status or privileges which entitled him to enter the Kingdom without a permit is also entitled to enter the Kingdom with a permit under paragraph (a) of subsection (1) of this section.

- (b) when any person referred to in paragraph (j) of subsection (l) of this section fails to leave the Kingdom on the ship or aircraft on which he arrived immediately on its departure, his presence in the Kingdom shall become unlawful with effect from the departure of such ship or aircraft.

Prohibited immigrants

8. (1) Any person who-

- (a) is not a person entitled to enter the Kingdom without a permit under the provisions of subsection (1) of section 7 of this Act; and
- (b) is a member of any of the prohibited classes as defined in subsection (2) of this section,

shall be a prohibited immigrant and, save as hereinafter expressly provided, his entry into or presence in the Kingdom shall be unlawful.

(2) The following persons are members of the prohibited classes-

- (a) any person who, not being exempt, is not the holder of a valid permit issued under the provisions of this Act;
- (b) any person in respect of whom a deportation order or a removal order is in force;
- (c) any person who at the time of entry into the Kingdom is unable to show to the satisfaction of an immigration officer that he has the means of supporting himself and his family and dependants (if any) or that he has definite employment awaiting him or who is likely to become a pauper or a charge on the public;
- (d) any person-
 - (i) who refuses to submit to an examination by a Government medical officer after being required to do so under the provisions of section 5(1)(d) of this Act, or to undergo, or to assist in the carrying out of, any test or investigation which such medical officer may require; or
 - (ii) who at the time of his entry into the Kingdom is certified by a Government medical officer to be

- suffering from a contagious or infectious disease which makes his presence in the Kingdom dangerous to the community; or
- (iii) in respect of whom at the time of his entry into the Kingdom a Government medical officer certifies that he is suffering from mental disorder or is a mental defective, and that his presence in the Kingdom would be a danger to the community;
- (e) any prostitute, or any person who is living on or receiving or who, prior to entering the Kingdom, lived on or received, the proceeds of prostitution;
 - (f) a person who has been convicted by a court in any country outside the Kingdom for an offence which-
 - (i) is punishable by death or imprisonment for a term of not less than 2 years in the country of conviction; or
 - (ii) if committed within the Kingdom, would be punishable by death or imprisonment for a term of not less than 2 years, and has not received a free pardon;
 - (g) any person who, in consequence of information received from any source deemed by the Prime Minister to be reliable, or from any Government, through official or diplomatic channels, is deemed by the Prime Minister to be an undesirable immigrant;
 - (h) any person who has been removed from any country or state by the government of such country or state on repatriation for any reason whatever and who, by reason of the circumstances connected therewith, is deemed by the Principal Immigration officer to be an undesirable immigrant;
 - (i) any person belonging to a class of persons declared by Cabinet, by order published in the Gazette, to be a prohibited class for the purposes of this section;
 - (j) any member of the family and any dependant of a prohibited immigrant, unless Cabinet in its absolute discretion declares that such member of the family or such dependant is not a member of this prohibited class.
- (3) The burden of proof that any person is not a prohibited immigrant shall lie upon that person. In any case where the Principal Immigration Officer refuses to allow any person to enter Tonga or makes a removal order in respect of any person on the ground that such person is a prohibited immigrant he shall, if so requested by such person, inform of the class of prohibited immigrant of which in the opinion of the Principal Immigration Officer he is a member.

PART IV – ENTRY PERMITS

Permits to enter and reside

9. (1) The Principal Immigration Officer may issue a permit in the prescribed form to any person applying to enter and reside in the Kingdom, upon such conditions as to the security to be furnished, the profession or occupation which the holder may exercise or engage in and the person by whom the holder may be employed within Tonga, and to any other matter whether similar to the foregoing or not which the Principal Immigration Officer may deem fit to impose or as may be prescribed, and may at his discretion vary any such condition.
- (2) If such applicant is required by the provisions of any written law relating to passports for the time being in force in the Kingdom to have a visa to enter the Kingdom, the Principal Immigration Officer may issue a visa to such applicant on the production by him of his passport or other travel document and on payment of the fee prescribed by ~~such written~~ (amended by No. 5 of 1998 – section 2) law and such visa shall remain valid until the expiry or cancellation of the entry permit issued to him.
- (3) The Principal Immigration Officer may at his discretion extend a permit issued under subsection (1) of this section, but shall not so grant or extend a permit so that the holder becomes an exempted person under subsection (1) of section 7 of this Act except in accordance with directions issued by the Prime Minister under section 4 of this Act.
- (4) any person aggrieved by the refusal of the Principal Immigration Officer to issue him any entry permit under the provisions of subsection(1) of this section may within 30 days of notification of such refusal to him appeal by petition in writing to the Prime Minister, whose decision thereon shall be final.

Visitor's permit

10. (1) The Principal Immigration Officer may issue a visitor's permit in the prescribed form (which shall include the condition specified in subsection (2) of this section) to a visitor, if he is satisfied that the visitor has a ticket or other means of travelling from Tonga to some other country which he will be able to enter.
- “1A. A visitor's visa may be issued for a single entry or for multiple entries into the Kingdom upon payment of the prescribed fees. A visa for multiple entries into the Kingdom may be issued for a period of up to 5 years” (Amended by section 3 (i) of No. 5 of 1998)
- (2) A visitor's permit shall entitle a visitor to remain in the Kingdom of Tonga for a period not exceeding 6 months and shall be subject to the condition that the visitor during his stay in the Kingdom-
- (a) shall not take up employment in the Kingdom without the permission in writing of the Principal Immigration Officer; and

- (b) shall not behave in a manner prejudicial to peace, good order, good government or public morals; and
- (c) shall not marry without the consent in writing of the Principal Immigration Officer; and
- (d) shall furnish such security in cash or otherwise as may be demanded by the Principal Immigration Officer.

“2.A.A visitor’s permit may be extended beyond 6 months in special circumstances as determined by the Principal Immigration Officer with the consent of Cabinet.” (amended by section 3 (ii) of Act No. 5 of 1998)

- (3) Any person aggrieved by the refusal of the Principal Immigration Officer to issue to him a visitor’s permit under the provisions of this section, may within 30 days of the notification of such refusal to him appeal by petition in writing to the Prime Minister, whose decision thereon shall be final.

Cancellation of and declaration regarding permits

- 11. (1) Where, upon the arrival in the Kingdom of any person to whom a permit has been issued, the Principal Immigration Officer is satisfied, as a result of inquiries made, or from other information , that such permit was issued as a result of any false representation or concealment of a material fact, the Principal Immigration Officer may cancel such permit.
- (2) Where at any time, during the period of validity of any permit the Principal Immigration Officer is satisfied that the holder of such permit is a prohibited immigrant, the Principal Immigration Officer shall cancel such permit.
- (3) Where any person has entered the Kingdom by virtue of a permit, and the Principal Immigration Officer is satisfied-
 - (a) that any material statement made in or in connection with the application for such permit was false or misleading; or
 - (b) that such person is a prohibited immigrant, the Principal Immigration Officer may declare at any time after the date of such entry, that the presence of such person in the Kingdom is unlawful.
- (4) On making any cancellation under subsection (1) or subsection (2) of this section or on making any declaration under subsection (3) thereof the Principal Immigration Officer shall, by notification, which, if the address of the person is known shall be sent to him at such address and otherwise shall be published in such manner as the Principal Immigration Officer deems fit, inform the person affected thereby of the grounds on which such cancellation or declaration has been made and such person may appeal against the cancellation or declaration, as the case may be, within such time and in such manner as may be prescribed, to the Prime Minister, whose decision shall be final.

Unlawful entry or presence in the Kingdom

- 12 (1) A person shall not remain in the Kingdom after the cancellation of any permit, or after the making of a declaration under the provisions of subsection (3) of section 11 unless he is otherwise entitled or authorised to remain in the Kingdom under the provisions of this Act or of any regulations made thereunder.
- (2) Any person who without reasonable cause contravenes the provisions of this section shall be guilty of an offence against this Act.

PART V – PROCEDURE ON ARRIVAL IN THE KINGDOM

Vessel to proceed to authorised port of entry or other place ordered by immigration officer

- 13 (1) No vessel carrying passengers, other than a vessel which plies solely between ports in the Kingdom, shall proceed to any place in the Kingdom other than an authorised port of entry.
- (2) The master of every vessel which arrives in the Kingdom shall, if ordered by an immigration officer, anchor or tie up his vessel at such place as may be ordered, and shall remain there until an immigration officer gives him permission to leave.
- (3) The master of any vessel who, without reasonable cause, contravenes or fails to comply with any of the foregoing provisions of this section or any order made or direction given thereunder shall be guilty of an offence against this Act.

Aircraft arriving in the Kingdom

14. (1) The Captain of every aircraft which arrives in the Kingdom shall land his aircraft at an authorised airport.
- (2) The captain of any aircraft who, without reasonable cause, contravenes or fails to comply with the provisions of subsection (1) of this section shall be guilty of an offence against this Act.

Persons not to board or leave vessel until examination completed

15. (1) Save under and in accordance with any authority granted by an immigration officer, no person other than-
- (a) the pilot;
 - (b) any Government officer boarding the vessel on duty;
 - (c) the owner, charterer, or agent of the vessel; or
 - (d) a consular officer of the country to which the vessel belongs;
- shall leave or board a vessel arriving in the Kingdom, nor may any person (other than the crew of a vessel carrying any such person) approach within one cable length of such vessel, until such vessel has been examined by an immigration officer.
- (2) Any person who contravenes any of the provisions of subsection (1) of this section shall be guilty of an offence against this Act and every

such person leaving a vessel in contravention of subsection (1) of this section shall if so required by an immigration officer return forthwith to such vessel and remain thereon and the master of the vessel shall be bound to re-embark such person.

Prohibition of disembarking from or boarding ships without permission of immigration officer

- 16 (1) It shall be the duty of the master, and the owner or charterer, of every vessel which arrives in the Kingdom to prevent any person other than a person specified in paragraph (a), (b), (c) or (d) of sub-section (1) of section 15 from disembarking from or boarding such vessel until such disembarkation or boarding has been authorised by an immigration officer, and for such purpose any means reasonably necessary may be used.
- (2) Where any person disembarks from or boards any vessel before being authorised by an immigration officer in that behalf, such person, the master and the owner or charterer of such vessel shall each be guilty of an offence against this section and-
- (a) it shall be no defence to a prosecution under this section that the master, owner, or charterer did not permit or do anything to facilitate the disembarkation or boarding of any such person;
 - (b) it shall be good defence to a prosecution under this section that the master, owner, or charterer took every reasonable precaution to prevent the disembarkation or boarding of any such person.
- (3) The master of the vessel from which any person has disembarked before such disembarkation has been authorised by an immigration officer shall be bound to re-embark such person and any master refusing to re-embark such person shall be guilty of an offence against this section.
- (4) Any person guilty of an offence against this section shall be liable, on conviction, to imprisonment for a term not exceeding one year or to a fine not exceeding \$100 or to both such imprisonment and fine.

Prohibition of removal of articles before examination

17. (1) Except with the authority of an immigration officer, no article or thing shall be removed or taken from, or put on board, any vessel until such vessel has been examined by an immigration officer under section 15.
- (2) Any person who contravenes the provision so sub-section (1) of this section shall be guilty of an offence against this Act.

Production of certain lists and person by masters of vessels

18. (1) The master of every vessel arriving in or leaving the Kingdom shall, whenever required to do so by an immigration officer-

- (a) furnish to such immigration officer a complete list of the members of the crew in such form and containing such particulars as may be prescribed;
 - (b) produce to such immigration officer for inspection and interrogation all members of the crew;
 - (c) furnish to such immigration officer in triplicate identification cards of each member of the crew in such form as may be prescribed;
 - (d) submit to such search of his vessel as may be necessary to establish the presence or absence of other persons on board;
 - (e) produce his ship's papers;
 - (f) report the presence on board of any stowaway or any unauthorised person or any person proceeding to any state or country on his removal from any other state or country by the competent authorities of such state or country.
- (2) In the case of vessels carrying passengers the master shall, in addition, produce-
- (a) a complete list of all the passengers in such form and containing such particulars as may be prescribed;
 - (b) in relation to every passenger disembarking in the Kingdom such particulars in such form as may be prescribed;
 - (c) all passengers for inspection and interrogation.
- (3) The master of any vessel who contravenes or fails to comply with any of the provisions of sub-section(1) or (2) of this section, and any person who hinders or obstructs any search of a vessel under paragraph (d) of sub-section (1) of this section, shall be guilty of an offence against this Act.
- (4) If any person is found on board a vessel whose presence has not been reported in accordance with paragraph (f) of subsection (1) of this section, the master of such vessel shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100 in respect of each such person.
- (5) In any proceedings under this section the certificate in writing of an immigration officer who boarded or examined any particular vessel to the effect that such vessel carried on arrival in the Kingdom a total number of seamen corresponding in description to the particulars on the identification cards furnished under paragraph (c) of sub-section (1) of this section shall be conclusive proof that such vessel did on arrival carry such number of seamen.

Production of lists and person by captain of aircraft

- 19 (1) The captain of every aircraft arriving in or leaving the Kingdom shall whenever required to do so by an immigration officer-

- (a) produce a passenger list as prescribed under the provisions of section 18(2)(a);
 - (b) produce in relation to every passenger landing in the Kingdom such particulars in such form as may be prescribed;
 - (c) produce a complete list of the members of the crew of his aircraft as prescribed under the provisions of section 18(1)(a);
 - (d) produce the members of the crew and passengers of such
 - (e) submit to such search of his aircraft as may be necessary to establish the presence or absence of other persons on board;
 - (f) report the presence on board of any stowaway or unauthorised person or any person proceeding to any state or country on his removal from any such state or country by the competent authorities of such state or country.
- (2) The captain of any aircraft who contravenes or fails to comply with any of the provisions of sub-section (1) of this section, and any person who hinders or obstructs any search of an aircraft under paragraph (e) of that sub-section, shall be guilty of an offence against this Act.
- (3) If any person is found on board an aircraft whose presence has not been reported in accordance with paragraph (f) of sub-section (1) of this section, the captain of such aircraft shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100 in respect of each person.
- (4) In any proceedings under this section the certificate in writing of an immigration officer who boarded or examined any particular aircraft to the effect that such aircraft carried on arrival in the Kingdom a total number of crew corresponding in description to the particulars on the list produced under paragraph (c) of sub-section (1) of this section shall be conclusive proof that such aircraft did on arrival carry such number of crew.
20. (1) Every person entering the Kingdom by sea or air from any place outside the Kingdom shall appear before an immigration officer at such time and place as the immigration officer may direct and shall furnish him with such information in such manner as the immigration officer may require or as may be prescribed.
- (2) Any person who refuses or neglects to appear before an immigration officer as required by sub-section (1) of this section or who gives false or misleading information under the said sub-section shall be guilty of an offence against this Act.

PART VI – REMOVAL OF UNLAWFUL IMMIGRANTS FROM THE KINGDOM

Removal of prohibited immigrants from the Kingdom

21. If during the examination of any person arriving in the Kingdom or after such inquiry as may be necessary such person is found to be a prohibited immigrant, the Principal Immigration Officer shall subject to the provision of any regulations made under this Act, prohibit such person from disembarking or may in his discretion detain him in prison or under police custody until an opportunity arises to return him to his place of embarkation or to the country of his birth or citizenship, and while so detained shall be deemed to be in lawful custody.

Removal of illegal immigrants

22. Any person who is convicted of an offence against this Act under section 6 or 8 shall be liable to be removed from the Kingdom by order of the Principal Immigration Officer.

Removal of persons unlawfully remaining in the Kingdom

23. (1) Where the presence of any person in the Kingdom is unlawful by reason of the provisions of section 12 such person shall, whether or not any proceedings are taken against him in respect of any offence against this Act under that section, be liable to be removed from the Kingdom by order of the Principal Immigration Officer.
- (2) Any person in respect of whom an order of removal has been made under the provisions of sub-section (1) of this section may appeal to the Prime Minister in such manner and within such time as may be prescribed.

Detention of persons ordered to be removed

24 (1) Where any person is ordered to be removed from the Kingdom under the provisions of this Act, it shall be lawful for the Principal Immigration Officer to order such person to be detained in custody for such period as may be necessary for the purpose of making arrangements for his removal:

Provided that any person detained under this sub-section who appeals under the provisions of sub-section (2) of section 23 against the order of removal may, in the discretion of the Principal Immigration Officer, be released, pending the determination of his appeal, on such conditions as to furnishing security or otherwise as the Principal Immigration Officer may deem fit.

(2) Subject to the determination of any appeal under section 23, any person who is ordered to be removed from the Kingdom may be placed on board a suitable vessel or aircraft by any police officer or immigration officer, and may be lawfully detained on board such vessel or aircraft, so long as the vessel or aircraft is within the limits of the Kingdom.

- (3) Any person who is detained in custody in pursuance of an order made by the Principal Immigration Officer under sub-section (1) of this

section may be so detained in any prison or police station or in any other place appointed for the purpose by the Principal Immigration officer.

- (4) If a person in respect of whom a removal order is made under this Act has been sentenced to any term of imprisonment such sentence shall be served before the order is carried into effect unless Cabinet otherwise directs.

Power to arrest person liable to removal

25. Any person reasonably believed to be a person liable to removal from the Kingdom under any of the provisions of this Act may be arrested without warrant by any immigration officer generally or specially authorised by the Principal Immigration Officer in that behalf or by a police officer, and may be detained in any prison or police station for a period not exceeding 14 days pending a decision as to whether an order for his removal should be made.

Unlawful return after removal

26. Any person who, having been removed or otherwise lawfully sent out of the Kingdom enters or resides in the Kingdom without the permission in writing of the Principal Immigration Officer shall be guilty of an offence against this Act and shall be liable on condition to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$1000 or to both such imprisonment and fine, and shall, in addition to any penalty for such offence, be liable to be removed or again removed as the case may be from the Kingdom.

Master, owners, etc liable for expenses

27. If any person-
- (a) enters the Kingdom from any vessel or aircraft contrary to the provisions of this Act or of any regulations made thereunder; or
 - (b) disembarks from any vessel or aircraft on which he has been re-embarked or to which he has been returned under the provisions of sections 15 or 16, the master, owner, charterer and agent thereof shall be jointly and severally liable for all expenses incurred by the Government in respect of the detention and maintenance of such person and his removal or conveyance from the Kingdom and such expenses shall be recoverable as a debt due to the Government from the master, owner, charterer and agent of such vessel or aircraft jointly and severally and shall be recoverable in an action brought in the name of the Principal Immigration Officer:

Provided that-

- (a) in no case shall the amount for which the master, owner or agent of the ship is liable in respect of such deportation or conveyance from the Kingdom exceed the costs of removing or conveying the said person to the place from which he was brought by the ship concerned; and

- (b) the Cabinet may if they think fit direct that the whole or any part of such expenses shall be paid out of the general revenue of the Kingdom; and
- (c) the provisions of this section shall not apply in the case of a person who is a prohibited immigrant by reason of being deemed by the Principal Immigration Officer, after his entry into the Kingdom, to be in the class of undesirable immigrants under the provisions of section 8(2)(g) of this Act; and
- (d) the provisions of this subsection shall not apply in any case where the prohibited immigrant is at the time of entry in possession of a permit purporting to authorize him to enter the Kingdom, and to be issued under the provisions of this Act.

Obligation to afford passage

- 28 (1) The master of a ship who is proceeding to a place to which a person is directed to be removed and is required by the Principal Immigration Officer to do so shall receive a person against whom a removal order has been made on board the ship and afford him a passage to that place and proper accommodation and maintenance during passage. Except as provided by section 27 of this Act cost of such passage, accommodation and maintenance shall be paid by the person removed or if the Cabinet directs out of the general revenue of the Kingdom.
- (2) If any master of a ship fails to comply with the provisions of subsection (1) of this section he shall be guilty of an offence, and be liable to a fine not exceeding \$5000 and the owner and charterer of the ship and any agent of such owner or charterer in the Kingdom shall be guilty of a similar offence and shall be jointly and severally liable to a similar penalty.

PART VII – MISCELLANEOUS

No suit for damages for things done in good faith under this Act

29. NO suit or other legal proceedings for damages shall be instituted in any court of law against the Government or any immigration officer or any other officer of the Government or any other person for or on account of or in respect of any act, matter or thing done or omitted to be done or purported to be done or omitted to be done, in good faith, in the performance or exercise or intended performance or exercise of any duty or power imposed or conferred by or under this Act or any Regulations made thereunder; and the provisions of this section shall extend to the protection from liability as aforesaid of any person deputed by delegation under this Act or under any other law for the time being in force to perform or exercise any such duty or power as aforesaid.

Appeals

30. (1) Any person aggrieved by a decision of an immigration officer under the provisions of this Act may require the matter to be referred to the Principal Immigration Officer for confirmation or over-ruling of such decision, and the immigration officer shall so refer such matter within 7 days and may grant an interim permit to such person and to any member of the family and to any dependant of such person to enter and remain in the Kingdom for a period not exceeding 7 days pending the decision of the Principal Immigration officer.
- (2) Any person aggrieved by a decision of the Principal Immigration Officer under the provisions of this Act may appeal against such decision to Cabinet. The appeal shall be by way of petition in writing and unless otherwise specified in this Act shall be made within 14 days of the decision appealed against.
- (3) Cabinet may, at their discretion, allow or disallow the appeal and their decision may not be questioned by any Court.
- (4) The Principal Immigration Officer may grant to any person who intends to appeal to Cabinet, and to any member of the family and to any dependant of such person, an interim permit allowing him to enter and remain in the Kingdom pending the determination of such appeal.
- (5) An immigration officer shall not grant an interim permit under this section unless he is satisfied that the person concerned is unlikely to become a charge on the public during the currency of the permit. Any such permit may be cancelled by an immigration officer if the person concerned appears likely to become a charge on the public or if he is satisfied that the visitor is not a person to whom an interim permit ought to have been issued or there has been a breach of any condition of the interim permit or if the appeal is not prosecuted with all due dispatch, and if not cancelled shall expire on the giving of a decision by the Principal Immigration Officer or on the determination of the appeal, as the case may be.

Repatriation

- 31 (1) Any person residing in the Kingdom who-
- (a) is not a citizen of the Kingdom; and
 - (b) is by reason of destitution, infirmity or mental incapacity, unable to obtain employment or to support himself and his family (if any); and
 - (c) is unable to pay the cost of his passage and of the passages of his family (if any) to the country of his birth or citizenship; and
 - (d) is or is likely to become a charge upon the public or on a charitable institution.

May apply to the Prime Minister for the repatriation of himself and his family (if any) at the cost of the Government.

- (2) Upon any such application, if the Prime Minister with the consent of Cabinet is satisfied, after such inquiry as he deems necessary, that such person has or is about to become a charge on the public or on a

charitable institution and is unable to pay the cost of the repatriation, the Prime Minister may authorise the payment of such cost subject to the condition specified in sub-section (3) of this section.

- (3) Any person repatriated at the cost of the Government shall enter into an undertaking, in such form as may be prescribed, that he will not return to the Kingdom without the sanction in writing of the Prime Minister. Such sanction shall be conditional upon such person refunding to the Prime Minister all costs and charges incurred in the repatriation of such persons and his family, if any, and shall be subject to such other conditions as the Prime Minister may deem expedient.
- (4) Any person who has been repatriated at the cost of the Government under this section who enters or attempts to enter the Kingdom without the sanction of the Prime Minister under subsection (3) of this section, or who having entered the Kingdom with such sanction, fails or neglects to comply with any condition upon which such sanction was given, shall be guilty of an offence against this Act.

Powers to detain vessel

- 32
- (1) The Principal Immigration Officer may by writing under his hand authorise any Harbour Master to detain any vessel in connection with which an offence against this Act is reasonably believed to have been or to be about to be committed, and the vessel may then be detained either at the police where it is found or at any place to which the Principal Immigration Officer may order it to be brought. The Principal Immigration officer shall give notice to the master or owner or charterer or agent of the vessel of the detention of such vessel.
 - (2) For the purposes of the detention and other lawful dealing with the vessel the Harbour Master shall have power to muster the crew and may, if he considers it necessary so to do, place a police guard on board.
 - (3) The detention shall be for safe custody only, and shall cease if a bond with two sufficient sureties to the satisfaction of the Principal Immigration Officer be given by the master, owner, charterer or agent of the vessel for the payment of any fine, costs and charges incurred under this Act in respect of any offence or default thereunder.
 - (4) If the default is made in the payment of any such fine, costs or charges incurred under this Act and of any costs incurred in and about the sale and the proceedings leading thereto and the balance shall be paid to the owner of or other person lawfully entitled to the vessel before condemnation and sale.

Offences

- 33.
- (1) Any person who-
 - (a) for the purpose of obtaining for himself or for to obtain any permit, exemption or other advantage under this Act or with intent to deceive any immigration officer, makes or causes to be made any

- declaration, return or statement which he knows or has reasonable cause to believe to be false or misleading; or
- (b) otherwise than with the authority of the Principal Immigration Officer (the burden of proof whereof shall be upon the accused person) alters, or wilfully defaces, any permit or any entry or endorsement in any passport made under or in pursuance of the provisions of this Act, or any official or certified copy of such permit, entry or endorsement; or
 - (c) resists, hinders or obstructs any immigration officer or other officer or person in the lawful execution of his duty, or in the lawful exercise of his powers, under this Act; or
 - (d) knowingly misleads or attempts to mislead any immigration officer of any duty, function, power or discretion under this Act; or
 - (e) unlawfully uses or without lawful authority (the burden of proof whereof shall be upon the accused person) has in his possession any forged or unlawfully altered passport, permit or other document issued or purported to have been issued under this Act or any forged or unlawfully altered passport, permit to other document issued or purported to have been issued under this Act or any forged or unlawfully altered birth certificate, marriage certificate or other document purporting to establish status or identity, or any passport in which any visa, entry or endorsement has been forged or unlawfully altered; or
 - (f) knowingly uses or has in his possession any unlawfully issued or otherwise irregular passport, permit or other document issued or purported to have been issued under this Act; or
 - (g) refuses or fails to submit to a medical examination or to undergo or assist in carrying out any test or investigation in connection with a medical examination, when so required under section 5(1)(d) of this Act; or
 - (h) having arrived in the Kingdom as a passenger by sea or air from any place outside the Kingdom fails to appear before an immigration officer as directed by him; or
 - (i) unlawfully enters or is unlawfully present within the Kingdom in contravention of the provisions of this Act; or
 - (j) refuses or fails to comply with any notice issued to him under the provisions of this Act or any Regulations made thereunder, with which he is required by this Act or such Regulations to comply; or
 - (k) refuses or fails to comply with any lawful term or condition subject to which any permit is or has been issued to him under this Act and with which he is required by this Act to comply; or
 - (l) harbours any person whom he knows or has reasonable cause to believe to be a person whose presence in the Kingdom is unlawful; or

- (m) uses any certificate, permit or exemption issued to or in respect of any other person as if it had been issued to or in respect of himself; or
- (n) gives, sells or parts with possession of any certificate, permit or exemption in order that, or intending or knowing or having reasonable cause to believe that, it may be used in contravention of the provisions of paragraph (M) of this sub-section

shall be guilty of an offence against this Act.

- (2) For the purposes of any proceedings for an offence under paragraph (a) of subsection (1) of this section, a declaration, return or statement to which that paragraph relates shall be deemed to have been made, or, as the case may be, the causing thereof to be made shall be deemed to have been done, at the time and place at which the same was received by the officer or person to whom it was addressed.
- (3) Where any person is convicted of an offence under paragraph (a) of subsection (1) of this section the court may, in addition to any penalty imposed for such offence, cancel any permit which was issued in consequence of such false declaration, return or statement as is mentioned in that paragraph.
- (4) Where any person is convicted of an offence under paragraph (k) of subsection (1) of this section the court may, in addition to any penalty imposed for such an offence, cancel his permit.
- (5) Where any fine is imposed under the provisions of this Act upon any owner, agent or master of any ship, such ship may, by order of the court, be detained until such fine has been paid and it shall be lawful for the court when imposing any such fine to order execution against such ship in satisfaction of such fine.
- (6) In any proceedings for an offence under this section a person shall be deemed to know the contents of any declaration, return or statement which he has signed or marked, whether he has eras such declaration, return or statement or not, if he knows the nature of the document.

General penalty

34. Any person guilty of an offence against this Act for which not special penalty is provided shall be liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$100 or to both such fine and imprisonment.

Trial of offences

35. (1) All offences against this Act or any regulations made thereunder shall be cognizable by-
- (a) the Magistrate's Court if within the limits of the jurisdiction of that Court; or
 - (b) the Supreme Court

(Subsection 2 repealed by Act No. 4 of 1997)

Disposal of fees, fines and forfeitures

36. All fees levied, all fines imposed and recovered, all monies forfeited and all costs and charges recovered, under this Act shall be paid into the General Revenue.

Regulations

- 37 (1) The Prime Minister may with the consent of Cabinet make regulations not inconsistent with the provisions of this Act for all or any of the following purposes:
- (a) prescribing anything which is to be or may be prescribed under the provisions of this Act;
 - (b) prescribing the forms to be used for the purposes of this Act and the stamps to be used by immigration officers;
 - (c) prescribing-
 - (i) the period for which permits shall be valid;
 - (ii) the terms and conditions subject to which any person may be granted a permit and the authority who may issue permits;
 - (d) providing for the payment and recovery of any expenses incurred by the Government in connection with the detention, maintenance, medical treatment and removal from the Kingdom of any person under the provisions of this Act;
 - (e) prescribing the place where, the person to whom, and the manner in which application to enter the Kingdom shall be made;
 - (f) prescribing the procedure to be followed by persons entering the Kingdom;
 - (g) prescribing the procedure to be followed by authorities in the exercise of their functions under this Act;
 - (h) governing the procedure to be followed and the fees and costs to be paid on any appeal;
 - (i) prescribing the deposit or security to be made or given by or in respect of any person granted a permit, and the conditions subject to which such deposit or security may be forfeited;
 - (j) prescribing the fees to be charged for anything done, and for any permit, exemption or document issued, granted, renewed, extended or replaced under this Act and regulations thereunder;
 - (k) generally for the better carrying into effect of the purposes and provisions of this Act;
- (2) All regulations made under this section shall be published in the Gazette and shall be laid before the Legislative Assembly as soon as possible after such publication.

Power to exempt from provisions of this Act

38 (1) Notwithstanding anything contained in this Act, the Prime Minister may, with the consent of Cabinet, by order exempt any person or class of persons, either absolutely or conditionally, from all or any of

the provisions of this Act and may in such order provide for any presumptions necessary in order to give effect thereto.

- (2) Every order made under this section shall be published in the Gazette.
- “(3) Any person exempted under this section shall be issued with a certificate in the form prescribed in the schedule to this Act” (amended by section 4 of No. 5 of 1998)

SCHEDULE

(Section 38)

ORDER OF EXEMPTION UNDER SECTION 38 OF THE IMMIGRATION ACT

Pursuant to section 38 of the Immigration Act (Cap. 62), I with the consent of Cabinet HEREBY ORDER that (Full name, occupation, and Address) is exempted from the operation (specify all or any provision) of that Act.

Dated at Nuku'alofa this day of 199

.....
PRIME MINISTER

**Section 37 – Immigration Regulations
Made by the Prime Minister
G.S. 41/72, GS 9/88**

Short title

1. (1) These regulations may be cited as the Immigration Regulations.
- (2) The Immigration Act is in these Regulations referred to as the Act.

Application to enter and reside

- 2 (1) Every application for a permit to enter and reside in Tonga shall be made in accordance with such form as the Principal Immigration Officer may approve, and shall be accompanied by 2 recent photographs of the applicant, endorsed by the applicant for the purposes of the said form, and shall be forwarded to the Principal Immigration Officer, Nuku'alofa, Tonga.
- (2) An applicant may apply for the inclusion in the permit to enter and reside to be issued to him of the names of his spouse and any child accompanying him, and shall furnish with such application 2 recent photographs of his spouse and each such child.
- (3) An applicant for a permit under this regulation who intends to engage in business in Tonga on his own behalf shall also furnish the following:-
 - (a) the names and addresses of 2 referees who have known or been closely associated with the applicant in either or both the applicant's business and social life during the last preceding 5 years and who would, if requested by the Principal Immigration Officer, furnish satisfactory character references on the applicant's behalf; and
 - (b) a Banker's reference or other indication acceptable to the Principal Immigration Officer of the applicant's financial background and status.
- (4) An applicant for a permit under this regulation who intends to engage in business in Tonga in partnership with a person already lawfully and permanently resident in Tonga shall, in addition to the foregoing requirements, furnish a true copy of the partnership agreement to the Principal Immigration Officer.
- (5) Where the applicant for a permit under this regulation is a person who seeks to enter the Kingdom to take up an approved employment, his application shall be accompanied by a true copy of his contract of employment with his employer who shall be responsible for the repatriation of the applicant on the termination of the employment.
- (6) Where the applicant for a permit under this regulation is a person who seeks to enter the Kingdom in order to pursue a course of study of any nature whatsoever, the applicant shall furnish details of the precise nature of the study, of any grants or fellowships awarded in

connection with that study and also details of the applicant's personal financial status.

Form of permit

3. A permit to enter and reside in Tonga shall be in such form as the Principal Immigration Officer may approve and shall be subject to the conditions specified thereon.

Visitor's permit

4. A visitor's permit shall be in such form as the Principal Immigration Officer may approve and shall be subject to the conditions therein set out and to such other conditions as the Principal Immigration Officer may deem fit to impose.

Furnishing security

- 5 (1) Where a person is required to furnish security as a condition to enter the Kingdom under section 9 or 10 of the Act, the amount of such security shall not exceed \$1000.
- (2) Security may, at the discretion of the Principal Immigration Officer, be accepted in the form of a deposit of cash, or of the lodging of a security bond in a form approved of by the Principal Immigration Officer.
- (3) Where a person has furnished security by a deposit of cash, such deposit may be retained by the Principal Immigration Officer so long as such person resides in the Kingdom by virtue of any permit issued to him by, or under the authority of, the Principal Immigration Officer: Provided that such period shall not exceed 7 years.

Ship and aircraft arriving

- 6 (1) The master of every ship or aircraft arriving in the Kingdom from outside the Kingdom shall prevent, with such reasonable force as may be necessary, the disembarkation of any person in respect of whom he has been notified by an immigration officer that such person is prohibited from landing in the Kingdom.
- (2) The notice to prohibit landing referred to in the last preceding subregulation shall be in such form as the Principal Immigration Officer may approve.
- (3) A master of a ship or an aircraft who contravenes or fails to comply with the provisions of this regulation shall be guilty of an offence against these Regulations and be liable to a fine not exceeding \$100 in respect of each offence and in default of payment to a term of imprisonment for any period not exceeding 6 months.

List of members of crew

- 7 (1) The list of members of a crew required under section 18(1)(a) of the

- Act or under section 19(1)(c) of the Act shall be in such form as the Principal Immigration Officer may approve and shall contain such particulars as the Principal Immigration Officer may deem necessary.
- (2) The seamen's identification card required under section 18(1)(c) of the Act shall be in such form as the Principal Immigration Officer may approve.

List of passengers

- 8 (1) The list of passengers required under section 18(2)(a) of the Act shall be in such form as the Principal Immigration Officer may approve and shall contain such particulars as the Principal Immigration Officer may deem necessary.
- (2) The particulars required under section 18(2)(b) of the Act and under section 19(1)(b) of the Act shall be supplied in accordance with such forms as the Principal Immigration Officer may approve.

Spouse and dependent children

9. Notwithstanding the other provisions of these Regulations, the Principal Immigration Officer may in the case of the spouse or dependent children of a person residing in the Kingdom give a permit in such form and upon such application as he may deem fit.

Using Forms and stamps

10. The Principal Immigration Officer may cause to be used for the purposes of the Act and of these regulations such forms and stamps as he may deem necessary and convenient for carrying out or giving effect to the provisions of the Act and of these regulations.

Fees

11. (1) The fees in the Schedule hereto shall be paid in respect of the matters specified.
- (2) All moneys received as fees shall be paid into the General Revenue.
- (3) The said fees are payable in respect of every person included in an application who requires a permit except that only one application fee is payable where a wife and/or children are included in another's application.

Fees are not refundable and should be paid in cash. Revenue receipts will be issued and should be obtained for all fees paid.

THE SCHEDULE TO THE PRINCIPAL REGULATION IS REPEALED AND SUBSTITUTED BY THE FOLLOWING SCHEDULE:-

1. Application form for all permits to enter and reside in Tonga a visitor's permit	1.00
2. Application for a visitor's permit	25.00
3. Application for a permit to enter, reside and engage in business either on his own or in partnership with a person	75.00
4. Application for a permit to enter and reside on assured income	30.00
5. Application for a permit to take up an approved employment	75.00
6. Application for a permit to enter, reside and study	30.00
7. Application for a permit other than under items 3,4,5 &6 above	30.00
8. Application for extension or variation of a permit other than a visitor's permit	30.00
9. The issue of any permit other than a visitor's permit	30.00
10. The issue of a duplicate or replacement permit	20.00
11. The issue of an extension of a permit	50.00
12. The endorsement or variation of a permit other than a visitor's permit	20.00
13. The lodgement of an appeal to the Prime Minister	75.00
14. Seaman's identification card	25.00
15. Except as set out in item 6, application and issue of police record for immigration purposes	15.00
16. Application and issue of police record for travel for education purposes	5.00