

M O N T S E R R A T

NO. 1 OF 2009

IMMIGRATION (AMENDMENT) ACT 2009

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of section 2
3. Insertion of Heading
4. Insertion of new sections 3A to 3D
5. Amendment of section 39
6. Insertion of new Parts 2 and 3

I ASSENT

Peter Waterworth
Governor

DATE: 11-2-09

MONTserrat

NO. 1 OF 2009

AN ACT TO AMEND THE IMMIGRATION ACT (CAP. 13.01).

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Legislative Council of Montserrat and by the Authority of the same as follows:—

Short title

1. This Act may be cited as the Immigration (Amendment) Act 2009.

Amendment of section 2

2. Section 2 of the Immigration Act (Cap. 13.01) (hereinafter referred to as the “Principal Act”) is amended in subsection (1) by inserting the following definitions in appropriate alphabetical order—

““asylum claim” is a claim by a person that to remove him from or require him to leave Montserrat would be contrary to—

- (a) the United Kingdom obligations under—

- (i) the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol of 1967 and extended to Montserrat; or
 - (ii) Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedom agreed by the Council of Europe at Rome on 4th November 1950 as extended to Montserrat;
- (b) section 54 of the Constitution of Montserrat protecting a person from being subject to torture, or to inhuman or degrading treatment or punishment.

“country of nationality” in relation to a person who has more than one nationality, means each of the countries of which that person is a national;

“deportation order” means an order made or in force under Part 3 requiring the person in respect of whom it is made to leave and remain out of Montserrat;

“Immigration Appeals Tribunal” means the Immigration Appeals Tribunal established under section 3A;

“recognized refugee” means a refugee who has been recognized as a refugee in terms of section 42D;

“Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and the Protocol to the Convention.”

Insertion of heading

3. The following heading is inserted immediately after section 2 of the Principal Act —

“PART 1

ADMINISTRATION, ENTRY AND LANDING”

Insertion of new sections 3A to 3D

4. The following new sections 3A to 3D are inserted immediately after section 3 of the Principal Act—

“Immigration Appeals Tribunal

3A.(1) For the purposes of this Act there is established an Immigration Appeals Tribunal which shall consist of the following members—

- (a) a Chairman;
- (b) a deputy Chairman; and
- (c) three other members,

all of whom shall be appointed by and hold office at the pleasure of the Governor in Council.

(2) The Chairman and the deputy Chairman shall both be attorneys-at-law of at least seven and five years call to the bar, respectively.

(3) The Governor in Council may appoint a Secretary to the Immigration Appeals Tribunal who shall record and keep all minutes of the meetings, proceedings and decisions of the Immigration Appeals Tribunal, and such Secretary shall have no right to vote.

Meetings of Immigration Appeals Tribunal

3B. (1) The Immigration Appeals Tribunal shall meet on case by case basis and upon such other occasions as, in the opinion of the Chairman, may be necessary or desirable in the public interest.

(2) Where any member of the Immigration Appeals Tribunal, other than the deputy Chairman, is absent from more than two out of five consecutive meetings of that Tribunal without obtaining the prior approval of the Chairman, he shall cease to be a member of the Tribunal.

(3) In the temporary absence of the Chairman or in the event of his inability to act, the deputy Chairman shall act as Chairman and exercise all the powers and functions of Chairman.

(4) The deputy Chairman shall not be present at any meeting of the Immigration Appeals Tribunal, unless acting as Chairman under subsection (3).

(5) At every meeting of the Immigration Appeals Tribunal—

- (a) it shall reach its decisions by a majority of the votes of members present and voting;
- (b) the Chairman or presiding member shall have no original but only a casting vote; and
- (c) three members present shall form a quorum.

(6) Where a member of the Immigration Appeals Tribunal has a personal or pecuniary interest, direct or indirect, in any matter which is to be determined by the Immigration Appeals Tribunal, he shall, if present at the meeting at which such matter is to be determined, as soon as possible after the commencement thereof, disclose the fact and leave the meeting.

(7) Subject to subsections (1) to (5) and to section 42K, the Immigration Appeals Tribunal shall have power to regulate its own procedure.

Duty of confidentiality

3C. (1) The fact and any particulars of, or relating to, any matter falling for consideration by, or the decision of, the Immigration Appeals Tribunal shall be treated as confidential by each member of that Tribunal and he shall not disclose any such fact or particular otherwise than in the proper performance of his duties under this Act or in compliance with the order of a court of competent jurisdiction.

(2) The failure of any member to comply with subsection (1)—

- (a) is an offence; and
- (b) constitutes a sufficient ground for the termination of his appointment.

(3) Any allegation of a breach of subsection (1) shall be fully investigated by a constable of the rank of Inspector or above.

Remuneration and immunity of members of the Tribunal

3D. (1) Subject to subsection (2) the Governor in Council shall determine—

- (a) the remuneration, if any, to be paid to members of the Immigration Appeals Tribunal;
- (b) the additional remuneration, if any, to be paid to the Chairman and deputy Chairman.

(2) Unless the Governor in Council otherwise decides, no public officer who is appointed to the Immigration Appeals Tribunal under section 3A shall be paid any remuneration or additional remuneration referred to in subsection (1) (a) or (b) unless his position description so provides.

(3) Every member of Immigration Appeals Tribunal is personally indemnified against all claims, damages, costs, charges or expenses incurred by him in the discharge or purported discharge of his functions or duties under this Act except claims, damages, costs, charges or expenses caused by his bad faith.

Amendment of section 39

5. Section 39 of the Principal Act is amended by inserting the following paragraph after paragraph (g)—

“(gg) non refundable process fee for appeal under section 42F;”.

Insertion of new Parts 2 and 3

6. The following Parts 2 and 3 are inserted immediately after section 42 of the Principal Act—

“PART 2**ASYLUM****Meaning of refugee**

42A. (1) Subject to the provisions of this section, a person shall be a refugee for the purposes of this Act if—

- (a) owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, he is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or
 - (b) not having a nationality and being outside the country of his former habitual residence, he is unable or, owing to a well-founded fear of being persecuted for reasons of race, religion, membership of a particular social group or political opinion, is unwilling to return to it.
- (2)** A person shall not be a refugee for the purposes of this Act if—
- (a) he has committed a crime against peace, a war crime or a crime against humanity, as defined in any international instrument to

which United Kingdom is a party by virtue of its extension to Montserrat and which has been drawn up to make provision in respect of such crimes; or

- (b) he has committed a serious non-political crime outside Montserrat prior to his admission to Montserrat as a refugee; or
 - (c) he has been guilty of acts contrary to the purposes and principles of the United Nations Organization; or
 - (d) having more than one nationality, he has not availed himself of the protection of one of the countries of which he is a national and has no valid reason, based on well founded fear of persecution, for not having availed himself of its protection.
- (3) A person shall cease to be a refugee for the purposes of this Act if—
- (a) he voluntarily re-avails himself of the protection of the country of his nationality; or
 - (b) having lost his nationality, he voluntarily reacquires it; or
 - (c) he becomes a person belonging to Montserrat under section 2 of this Act or as may be amended, or acquires the nationality of some other country and enjoys the protection of the country of his new nationality; or
 - (d) he voluntarily re-establishes himself in the country which he left, or outside which remained, as the case may be; or
 - (e) he can no longer, because the circumstances in connection with which he was recognized as a refugee have ceased to exist—
 - (i) continue to refuse to avail himself of the protection of his country of nationality; or
 - (ii) if he has lost his nationality, continue to refuse to return to the country of his former habitual residence.

Asylum claim

42B. (1) Any person who is within Montserrat, whether he has entered Montserrat lawfully or otherwise, and who wishes to remain in Montserrat as a refugee shall within 14 days of this arrival in Montserrat or within such further period as the Chief Immigration Officer may allow for good cause shown to his satisfaction, may apply to the Chief Immigration Officer for recognition of his status as a refugee in terms of the Refugee Convention.

- (2) (a) If, as a result of a decision to vary, or to refuse to vary a persons limited leave to enter or remain in Montserrat, any person to whom a permission to remain in Montserrat has been granted under section 9, 15 or 18 may be required to leave Montserrat, such person may within 14 days of being notified of the decision requiring him to leave Montserrat, apply to the Chief Immigration Officer and make an asylum claim for recognition of his status as a refugee in terms of the Refugee Convention on the ground that such a requirement would be contrary to the Refugee Convention;
- (b) Any person who is held to be a prohibited immigrant, and ordered by the Chief Immigration Officer to leave Montserrat under section 25(a) or ordered by the Magistrate's Court to be removed from

Montserrat on an application made in terms of paragraph (a), (c), (d) or (e) of subsection (1) of section 26, may apply a to the Chief Immigration Officer and make an asylum claim for recognition of his status as a refugee in terms of the Refugee Convention on the ground that his removal would be contrary to the Refugee Convention.

- (3) For the purposes of this Part, a person is eligible to apply for asylum if-
- (a) he is at least eighteen years of age or is an unaccompanied minor;
 - (b) he is in Montserrat; and
 - (c) the application for asylum has been made by him at a place designated by the Governor.

- (4)(a) Where a minor not accompanied by parents submits an application, his rights and lawful interests shall be represented during the asylum procedure by an independent authorised representative nominated by the Chief Immigration Officer. The duty of such representative is to act objectively in the interest of the minor.
- (b) Protection of the rights of the child shall be ensured for a minor who is not accompanied by parents in accordance with the procedures prescribed by rules.
 - (c) A minor who is not accompanied by parents has the right to receive legal assistance free of charge during the asylum procedure.
 - (d) The minor children of an asylum seeker or minor asylum seekers shall be ensure the acquisition of education in conformity with the laws in force. The Executive Council shall determine the procedures by which education shall be ensured.

(5) Where an asylum claim is made, it shall be recorded by the Chief Immigration Officer who, if satisfied that the claim was made as soon as reasonably practicable after the applicant's arrival in Montserrat, shall—

- (a) on being satisfied that for obvious and compelling reasons the applicant cannot be returned to his country of origin or nationality, grant him exceptional leave to remain in Montserrat; and
- (b) make arrangements for his support, accommodation and upkeep.

(6) The grant of exceptional leave under this section—

- (a) does not confer on the grantee any right to gainful occupation in Montserrat; and
- (b) may be revoked, varied or modified by the Chief Immigration Officer.

(7) Where a person who has applied for or intends to apply for asylum is desirous of voluntarily leaving Montserrat for a country in which he hopes to take up residence, the Chief Immigration Officer may render to him-

- (a) advice and other help in relation to his proposed journey; and
- (b) financial assistance to defray the cost of his travel and upkeep.

(8) Where an applicant under this Part is to be deported to a country of which he is a national or citizen and—

- (a) he does not possess a passport or other travel document; and

- (b) the country to which he is to be deported requires the Chief Immigration Officer to provide identification data in respect of the applicant as a condition of the admission of the applicant to that country,

the Chief Immigration Officer shall provide the requested data but shall not disclose whether the applicant had sought asylum.

Consideration of asylum claims

42C. (1) Unless it is impossible or inexpedient to do so, the Chief Immigration Officer shall consider every asylum application made in terms of subsection (1) or (2) of section 42B within 30 days of the application being so made, and may either within such period of 30 days or thereafter make such inquiry or investigation as he thinks necessary into such application.

(2) The Chief Immigration Officer in considering such application shall have regard to the Refugee Convention and any directions given by the Governor relating to asylum applications.

(3) The Chief Immigration Officer, for the purpose of inquiring or investigating any such application, may—

- (a) co-opt the services of any expert as an advisor;
- (b) seek the assistance or cooperation of UNHCR or any Non Governmental Organisation within or outside Montserrat.

Grant of refugee status and rights of a recognized refugee

42D. (1) After the inquiry or investigation the Chief Immigration Officer may recognize or refuse to recognize the applicant as a refugee and shall notify the applicant of his decision in writing.

(2) Where a person is recognized as a refugee under subsection (1) he shall be granted—

- (a) leave to remain indefinitely in Montserrat; and
- (b) the right to work for any employer in any occupation.

(3) Any person whose asylum claim under this section has been successful may also apply for asylum for his—

- (a) spouse including a common law spouse;
- (b) dependent children under 18 years of age; or
- (c) any other person who is related to him by blood or marriage; and who is dependant upon him,

and are with him in Montserrat or outside Montserrat.

(4) Every recognized refugee within Montserrat shall be —

- (a) entitled to the rights and be subject to the duties contained in the Refugee Convention as if the references therein to refugee were references to recognized refugee;
- (b) subject to all laws in force within Montserrat; and
- (c) afforded a reasonable opportunity to work and contribute to the development of Montserrat.

Directions by the Governor

42E. The Governor may, from time to time, issue directions to the Chief Immigration Officer for his guidance in the exercise of his powers, duties and functions under this Part and Part 3, and it shall be the duty of the Chief Immigration Officer to put into effect and to carry out such directions.

Appeals to the Immigration Appeals Tribunal

42F. A person whose asylum claim has been refused may appeal to the Immigration Appeals Tribunal, within 14 days of his being notified of the decision, against the refusal on the grounds that requiring him to leave Montserrat would be contrary to the Refugee Convention.

Removal of Asylum Claimant to safe third country

42G. (1) A person may not bring an appeal under section 42F, if the Governor certifies that—

- (a) it is proposed to remove the person to a country of which he is not a national or citizen; and
- (b) there is no reason to believe that the person rights under the Human Right Convention will be breached in that country.

(2) In determining whether a person in relation to whom a certificate has been issued under subsection (1) may be removed from Montserrat, the country specified in the certificate is to be regarded as—

- (a) a place where a persons life and liberty is not threatened by reason of his race, religion, nationality, membership of a particular society, group, or political opinion; and
- (b) a place from which a person will not be sent to another country otherwise than in accordance with the refugee convention.

(3) The person in respect of whom the certificate was issued may appeal against the decision to remove to the Immigration Appeals Tribunal on the ground that any of the conditions applicable to that certificate was not satisfied when it was issued or has since ceased to be satisfied.

Limitations on rights of appeal under section 42F

42H. Section 42F does not entitle a person to appeal against a refusal of an application if—

- (a) there are reasonable grounds for regarding the appellant as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country; or
- (b) the Governor has certified that the appellant's departure and exclusion from Montserrat would be in the interest of national security; or
- (c) the reason for the refusal was that he was a person to whom the Refugee Convention did not apply by reason of Article 1(F) of that Convention; and
- (d) the Governor has certified that the disclosure of material on which the refusal was based is not in the interest of national security.

Conduct of appeals

42I. (1) Appeals under section 42F shall be by notice in writing addressed to the Secretary of the Immigration Appeals Tribunal, and such notice—

- (a) shall set forth—
 - (i) the decision against which the appeal is made;
 - (ii) the grounds of the appeal; and
 - (iii) whether or not the appellant wishes to be heard personally or by a representative; and
- (b) shall be accompanied by a copy of the original application and the prescribed non-refundable processing fee.

(2) On receipt of the notice of appeal, the Immigration Appeals Tribunal shall—

- (a) notify the immigration officer of the decision against which the appeal is made and the grounds of the appeal and give the immigration officer 28 days or such longer period as the Chairman of the Immigration Appeals Tribunal may, for good cause shown, allow, to provide a written defence to the appeal; and
- (b) if the appellant has applied to be heard personally or by a representative, fix a time and a date for such hearing and notify the appellant and, the immigration officer.

(3) At every hearing of an appeal where the appellant or his representative is present, the appellant or his representative shall be given an opportunity to address the Immigration Appeals Tribunal, and the immigration officer or his representative, shall be heard in answer but the Immigration Appeals Tribunal may, in its absolute discretion, call upon either party further to address it.

(4) Representatives appearing on behalf of either party need not be persons having legal qualifications.

(5) The decision of the Immigration Appeals Tribunal shall be notified to the appellant with the least possible delay.

(6) Neither an applicant for asylum nor an appellant against the decision of the Chief Immigration Officer shall be required to leave Montserrat pending the outcome of his application or appeal; and, for the purposes of this section, an application or appeal is pending—

- (a) beginning on the date when it is submitted or instituted; and
- (b) ending on the date when the claimant or appellant-
 - (i) is formally notified of the outcome of the application or appeal; or
 - (ii) withdraws or abandons the application or appeal.

Orders of Immigration Appeals Tribunal and appeals from its decisions

42J. (1) On an appeal, the Immigration Appeals Tribunal may make such order, including an order for costs, as it thinks fit.

(2) Where an appeal is allowed under this section, the Immigration Appeals Tribunal may give direction to the Chief Immigration Officer to give effect to its decision.

(3) An appeal may be made to the High court from a decision of the Immigration Appeals Tribunal on a point of law only.

Rules relating to appeals

42K. The Governor in Council may make rules relating to the procedure and forms to be used for the notice of appeal to the court and the admission of evidence of any appeal heard by the Immigration Appeals Tribunal.

Helping asylum-seeker to enter Montserrat

42L.(1) A person who—

- (a) knowingly and for gain facilitates the arrival in Montserrat of an individual; and
- (b) knows or has reasonable cause to believe that the individual intends to apply for asylum under section 42B,

is guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 6 months or to a fine of \$1000 or to both.

(2) Subsection (1) does not apply to anything done by a person acting on behalf of an organisation which —

- (a) aims to assist individuals seeking asylum pursuant to the Refugee Convention; and
- (b) does not charge for its services.

PART 3

DEPORTATION

Power of Governor to make, vary and modify a deportation order and duty to report to Secretary of State

42M.(1) The Governor may, if he thinks fit, make a deportation order in respect of any person who is a person whose application for asylum has been refused under section 42D.

(2) The Governor—

- (a) may, at any time, revoke a deportation order and may vary or modify its terms so as to permit the person in respect of whom it is made, to enter and land in Montserrat for such purpose and subject to such conditions as may be specified; and
- (b) shall report any deportation order made, varied or modified by him, to the Secretary of State for Foreign and Commonwealth Affairs.

Form of deportation order

42N. A deportation order shall be in such form as the Governor may approve.

Service of deportation order and power to detain deportees

42O.(1) A deportation order shall be served upon the person to whom it is directed, by any immigration officer or constable.

(2) A person in respect of whom a deportation order is made may be detained in such manner and in such place as may be directed by the Governor and may be placed on board a vessel about to leave Montserrat, and shall be deemed to be in lawful custody while so detained and until the vessel finally leaves Montserrat.

Duty to comply with deportation order

42P.(1) A person in respect of whom a deportation order is made shall leave Montserrat in accordance with the terms of the order, and shall thereafter, so long as the order is in force, remain out of Montserrat.

(2) Whoever contravenes subsection (1) is guilty of an offence.

(3) Whoever returns to Montserrat in contravention of a deportation order is guilty of an offence and may again be deported under the original order, and section 42 O (2) shall apply accordingly in respect of such person.

Duty to afford transportation of deportee to a place outside Montserrat

42Q.(1) The Governor deportation order under section 42 M in respect of a person who has been refused asylum—

(a) may require the master of a vessel to remove the person from Montserrat; and

(b) provide to bear the cost of such removal, including the cost of providing escorts to and from the receiving country.

(2) The master of a vessel about to call at any place outside Montserrat shall, if so required by the Governor or by an immigration officer, receive a person against whom a deportation order has been made and his dependants, if any, on board the vessel, and shall afford him and them a passage to that place and proper accommodation and maintenance during the journey.

(3) Whoever contravenes subsection (1) is guilty of an offence.

(4) The Governor may apply any money or property of a person against whom a deportation order has been made in payment of the whole or any part of the expenses of or incidental to the journey from Montserrat and of the maintenance, until departure, of such person and his dependants, if any.

(5) Except so far as they are defrayed under subsection (4), any such expenses shall be payable out of public funds.

Harbouring deportee

42R. Whoever, without lawful excuse, knowingly harbours or conceals any person who is in Montserrat in contravention of a deportation order is guilty of an offence.

Arrest of person contravening, etc., this Part

42S. Whoever acts in contravention of this Part or is reasonably suspected of having so acted or being about so to act, may be taken into custody without warrant by an immigration officer or constable.

Evidence in proceedings taken under this Part

42T. In any proceedings taken under, or in connection with, this Part—

- (a) any document purporting to be a deportation order shall, until the contrary is proved, be presumed to be such an order; and
- (b) any deportation order shall be presumed, until the contrary is proved, to have been validly made and to have been made on the date upon which it purports to have been made.

Proceedings to be sanctioned by Attorney-General

42U. No proceedings shall be instituted under this Part or Part 2 except by the Attorney-General or with his previous sanction in writing.

Power to put questions and require production of documents

42W. (1) The Immigration Appeals Tribunal or any immigration officer, constable or other person lawfully acting in the execution of this Act may—

- (a) put any question to any person, being a question reasonably required in connection with the proper discharge of their, its or his functions under this Act; and
- (b) require any person to produce for inspection any document which he may have in his possession or under his control, being a document of which the inspection is reasonably required in connection with the proper discharge of such function as aforesaid.

(2) Whoever fails without lawful excuse (the proof of which shall be upon him) to answer fully and truthfully to the best of his knowledge and belief any such question, or to produce for inspection any such document, is guilty of an offence.

(3) Any power to require the production of a document for inspection shall be construed as including a power to take copies of such document and to retain such document for a reasonable time for such purpose.

Transitional

42X. Any application for asylum claim submitted on or before the coming into force of this Act and regarding which a decision has not been taken in conformity with the Immigration Act shall be dealt with in accordance with the procedure prescribed by Part 2 and 3.

Margaret Dyer-Howe
SPEAKER (Ag.)

Passed the Legislative Council this 27th day of January, 2009.

Judith Jeffers
CLERK OF COUNCILS

