

Botswana: Immigration Act of 1966

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Comments This is the consolidated version including amendments made by Act 34, 1975. This document includes only selected provisions.

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Part I - PRELIMINARY

2. Interpretation

In this Act, unless the context otherwise requires -

"alien" means any person who is not a Commonwealth citizen within the meaning of section 27 of the Constitution;

"Chief Immigration Officer" means the person appointed as such in terms of section 3;

"Immigration Control Officer" means the person appointed as such in terms of section 3;

"immigration officer" means any person appointed as an immigration officer in terms of section 3, and includes the Chief Immigration Officer;

"magistrate" means a magistrate Grade I and II;

"precincts of the airport" means that part of the airport at which customs and immigration formalities are conducted;

"residence permit" means a permit to reside in Botswana issued under section 19;

"special residence permit" means a residence permit issued or renewed on the instructions of the Minister given under section 19(7);

"travel document" means a passport or other document of identity which satisfies such conditions as may be prescribed;

"visitor" means any person in Botswana other than a person referred to in section 17;

"visitors' work permit" means a permit to work in Botswana issued under section 4 of the

Employment of Visitors Act.

3. Administration

(1)The Minister, by notice published in the Gazette, may appoint a Chief Immigration Officer, an Immigration Control Officer and such immigration officers as he may deem necessary for the purposes of this Act.

(2)In the exercise of their functions under this Act, immigration officers and the Immigration Control Officer shall act in accordance with such instructions as may be given by the Minister and, subject thereto, immigration officers other than the Chief Immigration Officer shall act in accordance with such instructions as may be given by the Chief Immigration Officer.

Part II - IMMIGRATION GENERALLY

4. Examination of immigrants

(1)Any person entering Botswana, other than a person having the written authority of the Immigration Control Officer or who is a member of a class of persons authorized by the Minister by notice published in the Gazette to enter Botswana without complying with this subsection, shall, on arrival at the border or, if travelling by air, on arrival at an airport within Botswana, present himself immediately to the nearest immigration officer, or if it is impracticable so to present himself immediately on arrival by reason of the distance of the nearest immigration officer from the border or airport, as the case may be, that person shall immediately take all reasonable steps to present himself to an immigration officer as soon as possible.

(2)An immigration officer may examine any such person for the purpose of ascertaining whether that person is or is not a prohibited immigrant or liable for removal under section 6 and it shall be the duty of every such person to furnish to an immigration officer such information as that officer may require for the purpose of his functions under this subsection.

(3)A person liable to be examined by an immigration officer under this section shall, if directed to do so by such officer in the course of his examination -

(a)declare whether or not he is carrying or conveying a travel document or other documents of any description specified by that officer, being a description appearing to that officer to be relevant for the purposes of the examination;

(b)produce to the officer any travel document or other document of any such description which he is carrying or conveying;

(c)submit to examination by a medical practitioner named by the officer for the purpose of ascertaining whether he is infected or afflicted with or suffering from any disease or physical infirmity which would render him a prohibited immigrant under this Act; and the power to examine any such person shall include power -

(i)to take his photograph, fingerprints or palmprints; and

(ii)to search him and any baggage belonging to him or under his control with a view to ascertaining whether he is carrying or conveying any documents of such description aforesaid:

Provided that no woman or girl shall be so searched except by a woman; and if there is no woman available for such search who is an immigration officer, the search may be carried out by a woman named for such purpose by an immigration officer.

(4) A person liable to be examined by an immigration officer under this section may be required by an immigration officer at the conclusion of the examination to submit to a further such examination at such place and within such period as the immigration officer imposing the requirement may specify by notice in writing given to such person.

(5) Where any notice in writing is to be given under subsection (4) to any person who is a member of a party in charge of a person appearing to an immigration officer to be a responsible person, such notice shall be deemed to be duly given if delivered to the person in charge of the party.

(6) Any person found in Botswana by an immigration officer, police officer or traditional authority who is suspected of being a prohibited immigrant or of having entered Botswana in contravention of this section may be required by any such person to appear before an immigration officer and to submit to such an examination as is described in subsections (2) and (3).

(7) If any person acts in contravention of, or fails to comply with this section, or with, any direction given or requirement imposed thereunder, he shall be guilty of an offence and liable to the penalties imposed in section 29 (1).

5. Examination of persons leaving Botswana

(1) Every person departing from Botswana, unless he is a person in direct transit through Botswana by air and does not leave the precincts of the airport, shall present himself to an immigration officer.

(2) The immigration officer may require such person -

(a) to produce his travel document and any permit issued to him in terms of this Act and to surrender any such permit which has ceased to be valid;

(b) to make and sign such declaration as may be prescribed;

(c) to answer, in writing or otherwise, such questions relating to his identity or departure as may be put to him by the immigration officer.

(3) Any person who acts in contravention of, or fails to comply with this section, or with any requirement made of him by an immigration officer under subsection (2), shall be guilty of an offence and liable to the penalties imposed in section 29 (3).

6. Travel document to be produced

(1) Subject to subsection (2), any person who on examination under section 4 fails on demand by an immigration officer to produce a valid travel document shall be removed from Botswana by an immigration officer or by a police officer acting under the authority of an immigration officer unless -

(a) he satisfies an immigration officer that he is a citizen of Botswana;

(b) he produces a valid residence permit and satisfies an immigration officer that he is the person to whom the same has been issued; or

(c) the Minister otherwise directs.

(2) Nothing in this section shall apply to -

(a) a wife accompanying her husband if her name and description is endorsed on a valid travel document carried by her husband;

(b) a person who appears to an immigration officer to be under the age of 16 years accompanying his father or mother if his name is endorsed on a valid travel document carried by such father or mother; or

(c) any person who satisfies an immigration officer that he is a member of any class of persons exempted by the Minister by notice published in the Gazette from carrying a travel document when entering Botswana.

7. Prohibited immigrants

Subject to this Act, the following persons shall be prohibited immigrants and their entry into or presence within Botswana is unlawful -

(a) any person who, if he entered or remained in Botswana, would be likely to become a public charge by reason of infirmity of mind or body, or because he is not in possession for his own use of sufficient means to support himself and such of his dependants as he proposes to bring with him into Botswana;

(b) any idiot or epileptic, or any person who is insane or mentally deficient, or any person who is deaf and dumb, or deaf and blind, or otherwise physically afflicted, unless in any such case he or a person accompanying him or some other person gives security to the satisfaction of the Minister for his permanent support in Botswana, or for his removal therefrom whenever required by the Minister;

(c) any person who is infected or afflicted with or suffering from a prescribed disease unless he has the written authority of an immigration officer to enter and remain in Botswana, issued upon prescribed conditions, and he complies with such conditions;

(d) any prostitute, or any person, male or female, who lives or has lived on or knowingly received or has received any part of the earnings of prostitution, or has procured women or girls for immoral purposes;

(e) any person who, not having received a free pardon, has been sentenced to imprisonment without the option of a fine in Botswana, or has been sentenced to imprisonment without the option of a fine in any other country for an offence which, if committed in Botswana, would be punishable with imprisonment without the option of a fine;

(f) any person who, in consequence of information received from any source deemed by the President to be reliable, is declared by the President to be an undesirable inhabitant of or visitor to Botswana;

(g) the wife and the children under the age of 18 years and any other dependants of a prohibited immigrant;

(h) any person named in a notice made under section 24 (1), or of a class or description specified in such notice.

9. Exclusion of prohibited immigrants

No prohibited immigrant shall enter or remain in Botswana and, subject to this Act, any immigration officer shall cause any prohibited immigrant entering or found within Botswana to be removed therefrom.

10. Detention of suspected prohibited immigrants

(1) Any person suspected of being -

(a) a prohibited immigrant; or

(b) a person liable to be declared to be an undesirable inhabitant of or visitor to Botswana under section 7(f)

may be detained by an immigration officer for such reasonable period, not exceeding 14 days, as may be required for the purpose of making inquiries as to such person's identity and antecedents.

(2) An immigration officer who detains any person under subsection (1) shall, as soon as practicable, and in any event within a period of 7 days, report such detention to the Minister.

(3) Where any person suspected of being -

(a) a prohibited immigrant by reason of section (e); or

(b) a person liable to be declared to be an undesirable inhabitant of or visitor to Botswana under section 7 (f), has been detained under subsection (1), and the Minister considers that further time is required for the completion of the inquiries referred to under that subsection,

the Minister may by order under his hand direct that the person shall be detained for a further period or periods, not exceeding 14 days at a time.

(4) Such person may, during such period, be detained in the nearest convenient prison or gaol unless with the consent of the Minister he or such sureties as may be approved by the Chief Immigration Officer enters into a bond for an amount so approved and deposits such sum, if any, as may be fixed by the Chief Immigration Officer to satisfy any judgment which may be given on the bond.

(5) The conditions of the bond shall be that such person shall appear within such period and before such person as may be described in the bond and shall report himself to an immigration officer at such times as may be fixed in the bond, and the bond may contain such other conditions as the Chief Immigration Officer sees fit to impose.

(6) Upon breach of any condition of the bond any court of competent jurisdiction may, upon application by the Chief Immigration Officer, give judgment against such person or his sureties in accordance with the conditions of the bond, and such person may be arrested and detained in the nearest convenient prison or gaol until such enquiries have been completed.

(7) Any person detained under this section and not serving a sentence of imprisonment shall be treated as a person awaiting trial.

13. Removal of prohibited immigrants

(1) Where a prohibited immigrant does not give notice of appeal under section 11, or where his appeal is dismissed, or where no appeal lies by reason of section 11 (6), he shall be removed from Botswana by an immigration officer or by a police officer acting under the authority of an immigration officer.

(2) Any prohibited immigrant who is serving a sentence of imprisonment for committing any offence may, if the President so directs, be removed from Botswana by an immigration officer or by a police officer acting under the authority of an immigration officer and such sentence shall be deemed to have expired with effect from such person's departure from Botswana.

14. Detention pending removal

(1) Any person who is liable to be removed from Botswana under this Act may be detained by an immigration officer for such period as may be necessary for the completion of arrangements therefor.

(2)Such person may during such period be detained in the nearest convenient prison.

(3)Any person so detained and not serving a sentence of imprisonment shall be treated as a person awaiting trial.

Part III - VISITORS AND RESIDENTS

17. The right to remain in Botswana

(1)Subject to this Act, a visitor may remain Botswana for not more than 7 days in aggregate in any one calendar month or at any one time and shall not remain in Botswana thereafter unless -

(a)he is authorized by an immigration officer in writing to do so;

(b)he is in possession of a visitor's work permit; or

(c)he is entitled by virtue of subsection (2) to reside in Botswana.

(2)Subject to this Act, a person shall be entitled to reside in Botswana if, and shall not be entitled to reside in Botswana unless -

(a)he is a citizen of Botswana;

(b)he is in possession of a residence permit;

(c)he is a member of any class of persons exempted by the Minister by notice published in the Gazette from obtaining a residence permit in order to reside in Botswana; or

(d)he is entitled to immunity from suit under the Diplomatic Immunities and Privileges Act.

(3)The Minister may at any time by notice in writing given to any particular visitor, or by order published in the Gazette applying to visitor of any specified class, direct that that visitor, or every visitor of that class, as the case may be, shall while he remains in Botswana be subject to such conditions (in this section referred to as "visit conditions") as he may specify in the notice, and may in like manner revoke or vary any visit conditions for the time being in force.

(4)Where any notice in writing is to be given under subsection (1) (b), or under subsection (3), to any visitor who is a member of a party in charge of a person appearing to the Immigration Control Officer to be a responsible person, such notice shall be deemed to be duly given if delivered to the person in charge of the party.

(5)Any visitor who remains in Botswana in contravention of subsection (1) without reasonable cause shall be guilty of an offence and liable to a fine of P10 for every day during which the offence continues. Whether or not he is prosecuted or liable to be prosecuted for an offence under this subsection, any visitor who remains in Botswana in contravention of subsection (1) may be removed therefrom by an immigration officer or by a police officer acting under the authority of an immigration officer, and sections 13 (2) and 14 shall have effect in relation to such visitor as they have in relation to a prohibited immigrant.

(6)Any visitor who fails to comply with any visit conditions to which he is subject in terms of subsection (3) shall be liable to the penalties prescribed in section 29 (2).

19. Residence permits

(1)Any person who wishes to obtain a residence permit may submit an application to the Board in the

prescribed form and in the prescribed manner.

(2)The Board shall consider every application submitted to it and may call for and obtain such additional information relating to the applicant as it may seem necessary.

(3)The Board shall submit each application received by it to the Minister together with its recommendation thereon.

(4)Subject to subsection (5), in making its recommendation the Board shall consider and state whether, in its opinion -

(a)the applicant is of good character;

(b)

(i)in the case of an applicant who proposes to take up employment or engage for reward in any business, profession or other occupation in Botswana, he has the qualifications, education, training and experience likely to render him efficient in that employment, business, profession or occupation and sufficient prospects of obtaining that employment or sufficient capital to engage in that business, profession or occupation, as the case may be; or

(ii)in the case of any other applicant, he is in a position to support himself and any dependants in Botswana otherwise than by taking up employment or engaging for reward in any business, profession or other occupation; and

(c)that it is in the interests of Botswana that a residence permit be issued to the applicant.

(5)In the case of -

(a)the wife, or child under the age of 18 years, of the holder of a residence permit; or

(b)the aged parent or grandparent of such a holder who is able and has undertaken to maintain him,

no consideration need be given and no opinion need be expressed by the Board in respect of the matters set out in subsection (4) (b).

(6)A residence permit shall, subject to payment of the prescribed fee, be issued in the prescribed form for such period, not exceeding 3 years, and subject to such conditions as the Minister may determine.

(7)The Minister may, at any time, by notice given in writing to any holder of a residence permit, or by notice published in the Gazette applying to all such holders of any specified class, vary the conditions attached to any residence permit.

(8)A residence permit may from time to time be renewed if the holder thereof has not become a citizen of Botswana and this section shall have effect in relation to any such renewal as it has in relation to the issue of a permit.

(9)The decision of the Minister on the issue or renewal of a residence permit shall be final and shall not be questioned in any court.

(10)Any person to whom a residence permit has been issued who contravenes any of the conditions attached thereto shall be guilty of an offence and liable to the penalties prescribed in section 29 (2).

(11)If the Minister is satisfied that by reason of any special circumstances which apply in the case of any person who has entered Botswana and who is not a prohibited immigrant it is desirable for a residence permit to be issued to such person without an application therefor being considered by the

Board, he may, notwithstanding the preceding provisions of this section, and whether or not such person has applied for a residence permit, issue a residence permit to that person.

20. Cancellation of residence permits

(1)The Minister may cancel a residence permit in any of the following circumstances -

(a)if the holder of the permit does not take up residence in Botswana within 6 months of the date of issue of the permit;

(b)if the holder of the permit absents himself from Botswana for a longer continuous period than 6 months;

(c)if the holder of the permit, or his agent, is convicted of any offence under section 27 in connexion with application for the issue or renewal of that permit;

(d)if the holder of the permit is convicted of an offence under section 19 (10):

(e)if the holder of the permit having attained the age of 18 years is convicted of any other offence punishable with imprisonment and the court by which he is convicted, or any court to which his case is brought by way of appeal against conviction or sentence, recommends that the permit be cancelled; or

(f)if the President is satisfied that the object for which the permit was issued or renewed has been completed or no longer exists, or that it is no longer in the interest of Botswana that the holder should have such a permit.

(2)Where a person convicted of an offence by any court is committed for sentence by any other court, the power to make a recommendation under subsection (1) (e) shall be exercisable by the court to which he is committed and not by the court by which he is convicted.

(3)For the purpose of any law relating to appeals in criminal cases, a recommendation under subsection (1) (e) shall be treated as an order made on conviction; and the validity of such a recommendation shall not be called in question except on an appeal against the recommendation or against the conviction upon which it is made.

(4)If a residence permit is cancelled under subsection (1) the Minister shall cause written notice of the cancellation to be served on the holder of the permit and in the notice shall state the reason for the cancellation and the period that is to elapse after such service before the cancellation takes effect and shall require him if he is still within Botswana to leave Botswana forthwith on the cancellation taking effect: Provided that if it is not practicable to serve such written notice on the holder of the permit by reason of the absence of such holder from Botswana or because the holder cannot be found, the notice shall be deemed to be duly served if published in such manner as the Minister may direct.

(5)If any person who is required to leave Botswana under subsection (4) fails to do so without reasonable excuse, proof of which shall lie upon him, he shall be removed therefrom by an immigration officer or by a police officer acting under the authority of an immigration officer, and sections 13 (2) and 14 shall have effect in relation to such person as they have in relation to a prohibited immigrant.

(6)Where a holder of a residence permit is removed from Botswana as a prohibited immigrant, his permit shall be deemed to be cancelled with effect from his departure from Botswana.

Part IV - ADDITIONAL PROVISIONS IN RESPECT OF ALIENS

21. Special restriction on aliens

The President may -

(a) by order served on an alien; or

(b) by order published in the Gazette directed to aliens of a specified class

impose in respect of that alien or aliens of a specified class, as the case may be, such special restrictions as to residence, reporting to the police, occupation or employment as he may consider necessary in the public interest.

22. Deportation of aliens

(1) Subject to subsection (6), the President may make an order requiring an alien to leave Botswana (in this section referred to as a "deportation order") in either of the following circumstances -

(a) if that alien is convicted of any offence punishable with imprisonment and the court before which he is convicted, or any court to which his case is brought, by way of appeal against conviction or sentence recommends that a deportation order be made in respect to that alien; or

(b) if the President deems it to be conducive to the public good to make a deportation order in respect of that alien.

(2) Where a person convicted of an offence by any court is committed for sentence to any other court, the power to make a recommendation under subsection (1) (a) shall be exercisable by the court to which he is committed and not by the court by which he is convicted.

(3) For the purpose of any law relating to appeals in criminal cases, a recommendation under subsection (1) (a) shall be treated as an order made on conviction and the validity of such a recommendation shall not be called in question except on an appeal against the recommendation or against the conviction upon which it is made.

(4) A deportation order shall be made in writing under the hand of the President, and the President shall cause the order to be served on the person to whom it relates and shall state in the order the period that is to elapse after such service before the order takes effect.

(5) If on the expiration of the period specified in a deportation order the alien in respect of whom the order was made has not left Botswana he shall be removed from Botswana by an immigration officer or by a police officer acting under the authority of an immigration officer and sections 13 (2) and 14 shall have effect in relation to such alien as they have in relation to a prohibited immigrant.

(6) Nothing in this section shall apply to any person entitled to immunity from suit under the Diplomatic Immunities and Privileges Act.

Part V - SUPPLEMENTARY

34. Transitional

The provisions of the Schedule shall have effect for the purposes of transition to the provisions of this Act from the provisions of the Immigration Law, 1963, repealed by this Act.

SCHEDULE - TRANSITIONAL PROVISIONS

1. Application of Act to persons who entered Bechuanaland

This Act shall have effect in relation to any person who entered the former protectorate of Bechuanaland as if he had then entered Botswana.

2. Prohibited immigrants

This Act shall have effect in relation to any person who was a prohibited immigrant by virtue of any other provisions of the law repealed by this Act or of any law repealed by such law as if he was a prohibited immigrant by virtue of the corresponding provisions of this Act.

3. Residence permits

Every permit issued under section 21 of the law repealed by this Act or having effect as a residence permit issued under that law shall have effect as a residence permit issued under this Act.

4. Schedule in addition to section 16 of Interpretation and General Provisions Act

The provisions of this Schedule shall be in addition to and not in derogation from the provisions of section 16 of the Interpretation and General Provisions Act.

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