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(L.S.)

GUIDO DE MARCO
President

8th November, 2002

ACT No. XXIII of 2002

An Act to amend the Immigration Act, Cap. 217

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:

Short title and
commencement.

Cap. 217.

1. (1) The short title of this Act is the Immigration (Amendment) Act, 2002, and it shall be read and construed as one with the Immigration Act, hereinafter referred to as "the principal Act".

(2) The provisions of this Act shall come into force on such date as the Minister responsible for immigration may by notice in the Gazette appoint, and different dates may be so appointed for different provisions of this Act.

Amendment of the
Arrangement of the
Act.

2. For the table entitled "Arrangement of the Act" appearing with the principal Act there shall be substituted the following:

"Arrangement of Act

	Articles
Part I Preliminary	1-3
Part II Exempt Persons	4
Part III Special Provisions	4A
Part IV Prohibited Immigrants	5-25
Part V General	25A-36".

Amendment of
article 2 of the
principal Act.

3. Article 2 of the principal Act shall be amended as follows:

(a) immediately before the definition "dependant" there shall be added the following new definitions:

" "Agreement" means an agreement to which Malta is a party entered into by a group of states reciprocally granting to citizens of such states or their dependants the right to enter, remain and reside in and leave the country of such state, to move freely within such states for such period as may be established in the agreement and to work or establish, provide or receive services therein; and "Agreement State" and "citizen of an Agreement State" shall be construed accordingly; and where for the purposes of Part III, a state is a party to such an Agreement subject to modifications and adaptations, a citizen of an Agreement State shall be subject to such modifications or adaptations as may be prescribed;

"Board" means the Immigration Appeals Board constituted by article 25A;

"Border Agreement" means an agreement to which Malta is a party entered into by a group of states, providing for common border controls and the free entry and exit of persons lawfully within the territory, into and from each of their territories, and "Border Agreement State" and "citizen of a Border Agreement State" shall be construed accordingly;

"carrier" means any person whose occupation is to provide passenger transport by air, sea or land;"

(b) in the definition "dependant", immediately after paragraph (c) thereof, there shall be added the following new paragraph:

"(d) any other member of the family as may be prescribed by the Minister;"

(c) in the definition "exempt person" the words "Part III" shall be substituted by the words "Part IV"; and

(d) for the definition of "removal order" there shall be substituted the following:

" "removal order" means an order issued by the Principal Immigration Officer or the Immigration Appeals Board in accordance with article 14, or the Court of Appeal under article 25A as the case may be;"

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Amendment of
article 4 of the
principal Act.

4. Article 4 of the principal Act shall be amended as follows:

(a) for the words "Part III" wherever they occur therein, there shall be substituted the words "Part IV";

(b) paragraphs (d) and (e) of sub-article (1) thereof shall be deleted, and paragraphs (f), (g) and (h) thereof shall be renumbered as paragraphs (d), (e) and (f) thereof respectively;

(c) the proviso to sub-article (1) thereof shall be deleted;
and

(d) in sub-article (2) thereof for the words "(f)", "(g)" and "(h)" wherever they occur, there shall be substituted the words "(d)", "(e)" and "(f)" respectively.

Renumbering of
Part III of the
principal Act.

5. The heading "Part III" appearing before article 5 of the principal Act, shall be substituted by the heading "Part IV".

Addition of new
Part III to the
principal Act.

6. Immediately after Part II of the principal Act there shall be added the following new Part:

"Part III

Special Provisions

Special
provisions.

4A. (1) Notwithstanding any other provisions of this Act, the Minister may make regulations to give effect to any Agreement or Border Agreement to which Malta may be a party and without prejudice to the generality of the foregoing, may make regulations in order to:

(a) grant and regulate the right of any citizens of Agreement States or their dependants to enter, remain and reside in, and leave Malta;

(b) grant and regulate the right of persons mentioned in the preceding paragraph to seek employment and work in Malta and to establish services and, or provide or receive such services in Malta;

(c) grant and regulate the rights mentioned in the preceding paragraphs to any person and his dependants who, though not being a person mentioned in paragraph (a) of this article, is lawfully in the territory of any state which is bound by a Border Agreement.

(2) Any right granted under this Part shall always be subject to such limitations as may be reasonably justified on grounds of public policy, public security and public health.”.

7. Article 5 of the principal Act shall be amended as follows: Amendment of article 5 of the principal Act.

(a) sub-article (1) thereof shall be substituted by the following:

“(1) Any person, other than one having the right of entry, or of entry and residence, or of movement or transit under the preceding Parts, may be refused entry, and if he lands or is in Malta without leave from the Principal Immigration Officer, he shall be a prohibited immigrant.”; and

(b) in sub-article (2) thereof for the words “a person shall be a prohibited immigrant also” there shall be substituted the words “a person shall, unless he is exempted under this Act from any of the following conditions or special rules applicable to him under the foregoing provisions of this Act, be a prohibited immigrant also”.

8. In sub-article (1) of article 6 of the principal Act for the words “For the purposes of this Act” there shall be substituted the words “Without prejudice to any rights arising from the preceding Parts, for the purposes of this Act”. Amendment of article 6 of the principal Act.

9. Article 7 of the principal Act shall be amended as follows:- Amendment of article 7 of the principal Act.

(a) in sub-article (1) thereof, for the words “The Minister may issue” there shall be substituted the words “Without prejudice to the provisions of the preceding Parts, the Minister may issue”; and

(b) immediately after sub-article (2) thereof, there shall be added the following new sub-articles:

“(3) Any residence permit issued under this Act may be revoked by the Minister for the following reasons:

(a) when the permit was obtained on the basis of fraud, or omission on the part of the resident at the time of his application for a residence permit of a material fact which, had it been known then, would have reasonably justified the Minister to refuse the application for such permit;

A 1996

(b) when, following the grant of a residence permit, the said resident, commits, whether in Malta or outside Malta, a serious crime which, had it been committed prior to the granting of such permit, would have reasonably justified the refusal of such permit by the Minister.

(4) Any person aggrieved by such decision shall have a right to appeal to the Board within ten days from when he is notified of such revocation.

(5) The Minister may make regulations to implement the provision of this article, including, without prejudice to the generality of the foregoing, to regulate any right of appeal to the Board appertaining to a person aggrieved by a decision of the Minister, and any application for residents in Malta to bring to Malta any of their dependants to reside with them."

Substitution of
article 8 of the
principal Act.

10. Article 8 of the principal Act shall be substituted by the following:-

"Visas.

8. (1) Without prejudice to the rights of entry and residence envisaged by the preceding Parts, and to the powers of the Principal Immigration Officer to issue a visa at the border under this Act and in regulations made thereunder, the Principal Immigration Officer shall refuse leave to enter Malta to any person seeking to enter Malta who, in accordance with the provisions of this Act, must be in possession of a visa and who is not in possession of such a visa as is provided for in this article.

(2) The Minister may make regulations in order to -

(a) list the countries whose nationals will be required to be in possession of a visa for any stay for such period of time as may be prescribed, or whose nationals will be exempted from such requirement;

(b) regulate all aspects of the issue of visas or other forms of authorisation and make provision for different types of visa including visas for single or multiple entry or re-entry;

(c) make provision for and regulate the issue of visas at the border;

(d) make provision for and regulate the revocation of visas;

(e) regulate the issue and revocation of emergency travel documents to persons who hold the nationality of such states as may be prescribed.”.

11. In sub-article (1) of article 9 of the principal Act for the words “Leave to land” there shall be substituted the words “Without prejudice to any regulations made under Part III of this Act, leave to land”.

Amendment of article 9 of the principal Act.

12. In subarticle (1) of article 11 of the principal Act for the words “or of a residence permit” there shall be substituted the words “or, saving the provisions of Part III, of a residence permit”.

Amendment of article 11 of the principal Act.

13. Articles 14 and 15 of the principal Act shall be substituted by the following: -

Substitution of articles 14 and 15 of the principal Act.

“Removal Orders.

14. (1) If any person is considered by the Principal Immigration Officer to be liable to removal as a prohibited immigrant under any of the provisions of article 5, the said Officer may issue a removal order against such person who shall have a right to appeal against such order in accordance with the provisions of article 25A:

Provided that in relation to any such person as may be prescribed by regulations made under article 4A of this Act and who entered Malta or is in Malta, a removal order shall only be issued following an application to that effect by the Principal Immigration Officer to the Board which shall make such order upon being satisfied that such person is liable to expulsion under this Act. The provisions of article 25A shall mutatis mutandis apply to any order issued by the said Board under this proviso.

(2) Upon such order being made, such person against whom such order is made, shall be detained in custody until he is removed from Malta:

Provided that if the person in respect of whom an expulsion order has been made is subject to criminal proceedings for a crime punishable with imprisonment or is serving a sentence of imprisonment, the Minister may give such directions as to whether the whole or part of the sentence is to be served before the expulsion of such person from Malta, and, in default of such directions, such person shall be removed after completion of the sentence.

(3) Nothing in this article shall affect the obligation of any person who does not fulfil or who no longer fulfils the conditions of entry, residence or free movement to leave Malta voluntarily without delay.

(4) Removal of a person shall be to that person's country of origin or to any other State to which he may be permitted entry, in particular under the relevant provisions of any applicable re-admission agreement concluded by Malta and in accordance with international obligations to which Malta may be party.

(5) Nothing in this article shall preclude or prejudice the application of Maltese law on the right to asylum and the rights of refugees and of Malta's international obligations in this regard.

(6) On an application made by the Principal Immigration Officer to the Board, the Board, if satisfied that any expenses have been or will be incurred by the Government in connection with the maintenance, medical treatment or expulsion of a prohibited immigrant or his dependants, may issue an executive warrant against a prohibited immigrant and may also order the forfeiture of such amount of any moneys in his possession as is to be recovered. A warrant issued under this sub-article may be enforced in the same manner as a warrant issued in virtue of an executive title for a civil debt by a Court in the exercise of its civil jurisdiction. The partial recovery of expenses under this sub-article shall not prejudice the liability of any surety for the balance, nor shall the issue or execution of a warrant under this article be a condition precedent to the liability of a surety.

(7) The Minister may make regulations for the purpose of implementing the provisions of this article and in particular for further regulating the manner and procedure for, and the costs of, expulsion.

Responsibility
of carriers.

15. (1) A carrier by sea or air shall be obliged to take all necessary measures to ensure that a person carried by it to Malta is in possession of the travel documents and any visa or other authorisation required for entry into, or transit through, Maltese territory before transporting such person to Malta.

(2) At the request of the Principal Immigration Officer the carrier shall return a person refused entry on the

grounds of not being in possession of any visa or document mentioned in the preceding sub-article, either to the State from which he was transported, or to the State which issued the travel document on which he travelled, if any, or to any other State to which he is guaranteed entry.

(3) A carrier may not carry from any State to Malta a person who is not in possession of any travel document, visa or other special authorisation where required under this Act, required for his lawful entry into Malta and in case of such default such carrier shall be liable to pay to the Principal Immigration Officer such penalty as may be established by him, not being more than five thousand liri or such other maximum sum as may be prescribed by the Minister. Such penalty shall be recoverable by the Principal Immigration Officer, after the term within which an appeal to the Board may be entered, has elapsed without an appeal having been entered, or after the decision of such Board as a civil debt due to the Government and the provisions of article 466 of the Code of Organisation and Civil Procedure shall, notwithstanding any other provision to the contrary, *mutatis mutandis* apply to such debt."

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| 14. In article 16 of the principal Act, the proviso thereto shall be deleted. | Amendment of article 16 of the principal Act. |
| 15. Article 18 of the principal Act shall be deleted. | Repeal of article 18 of the principal Act. |
| 16. Sub-article (1) of article 22 of the principal Act shall be substituted by the following: | Amendment of article 22 of the principal Act. |
| <p>"(1) Without prejudice to special provisions which may be made under Part III of this Act, the Minister may, if he deems it to be conducive to the public good, make a deportation order against any person."</p> | |
| 17. Article 23 of the principal Act shall be deleted. | Repeal of article 23 of the principal Act. |
| 18. In article 24 of the principal Act for the words "by reason only of such omission" there shall be substituted the words "by reason only of such omission and without prejudice to the issue of a removal order or a deportation order under this Act". | Amendment of article 24 of the principal Act. |
| 19. Immediately before article 26 of the principal Act there shall be added the following new article:- | Addition of new article 25A to the principal Act. |
| <p>25A. (1) (a) There shall be a board, to be known as the Immigration Appeals Board, hereinafter referred to as the Board consisting of a lawyer who shall preside, a person</p> | |

versed in immigration matters and another person, each of whom shall be appointed by the President acting on the advice of the Minister:

Provided that the Minister may by regulations prescribe that the Board shall consist of more than one division each composed of a Chairman and two other members as aforesaid.

(b) The Minister may make regulations to regulate the distribution by types of appeals or applications amongst the divisions of the Board.

(2) A member of the board shall be disqualified from hearing an appeal in such circumstances as would disqualify a judge in terms of Sub-Title II of Title II of Book Third of the Code of Organization and Civil Procedure; and in any such case either the member shall be substituted by another person appointed for the purpose by the President acting on the advice of the Minister, or the appeal, when there is more than one division of the Board in office, may be referred by order of the Board from one division of the Board to another.

(3) The members of the Board shall hold office for a period of three years, and shall be eligible for re-appointment.

(4) A member of the Board may be removed from office by the President acting on the advice of the Prime Minister, on grounds of gross negligence, conflict of interest, incompetence, or acts or omissions unbecoming a member of the Board.

(5) Any person aggrieved by any decision of the competent authority under any regulations made under Part III, or in virtue of article 7, article 14 or article 15 may enter an appeal against such decision and the Board shall have jurisdiction to hear and determine such appeals.

(6) During the course of any proceedings before it, the Board, may, even on a verbal request, grant provisional release to any person who is arrested or detained and is a party to proceedings before it, under such terms and conditions as it may deem fit, and the provisions of Title IV of Part II of Book Second of the Criminal Code shall, *mutatis mutandis* apply to such request.

(7) Any appeal has to be filed in the Registry of the Board within three working days from the decision subject to appeal. Cap. 9.

(8) The decisions of the Board shall be final except with respect to points of law decided by the Board regarding decisions affecting persons as are mentioned in Part III, from which an appeal shall lie within ten days to the Court of Appeal (Inferior Jurisdiction). The Rule Making Board established under article 29 of the Code of Organisation and Civil Procedure may make rules governing any such appeal."

20. Sub-article (7) of article 31 of the principal Act shall be substituted by the following: Amendment of article 31 of the principal Act.

"(7) Any person who fails to comply with any of the provisions of this article shall be guilty of an offence and shall be liable, on conviction, to a fine (multa) of not less than five hundred liri but not exceeding two thousand liri or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment."

21. Article 32 of the principal Act shall be amended as follows: Amendment of article 32 of the principal Act.

(a) paragraph (a) of sub-article (1) thereof shall be substituted by the following:-

"(a) aids or assists any person to land or attempt to land in Malta, or to reside in Malta, contrary to the provisions of this Act, or any person to land or attempt to land, or to reside in, or to leave any other State contrary to the law on entry, residence and exit of that State, or conceals or harbours any person whom he knows, or has reasonable ground for believing, to be in Malta contrary to the provisions of this Act; or";

(b) in sub-article (1) thereof, for the words "fine (multa) of not less than five hundred liri, or imprisonment for a term not exceeding six months" there shall be substituted the words "fine (multa) not exceeding five thousand liri or to imprisonment for a term not exceeding two years"; and

(c) immediately after sub-article (2) thereof, there shall be added the following new sub-article:

"(3) Where the competent authority in Malta is requested by another State to prosecute for an offence under paragraph (a) of sub-article (1), the competent authority shall first request the competent authority of the State making the request for prosecution to specify, by means of an official denunciation or a certificate, the provisions of law which the latter State considers to have been infringed."

Amendment of
article 35 of the
principal Act.

22. In sub-article (1) of article 35 of the principal Act for the words "Notwithstanding anything in this Act or in any other law contained" there shall be substituted the words "Notwithstanding anything in this Act or in any other law contained, but subject to any provisions made under Part III of this Act".

Substitution of
article 36 of the
principal Act.

23. Article 36 of the principal Act shall be substituted by the following:

"Regulations.

36. (1) Without prejudice to any provision of this Act vesting the power to make regulations in the Minister, the Minister may make regulations for prescribing anything which is by this Act to be prescribed and generally for carrying the purposes or provisions of this Act into effect.

(2) In particular, the Minister may make regulations to regulate:

(a) any border checks which may be ordered, their scope, nature and frequency, the classification of different borders, the designation of official points of entry in, and exit from, Malta, and the hours when such entry or exit may take place;

(b) the position of the holders of diplomatic, service and other official passports as well as of other categories of persons in all matters which are the subject of this Act."

Transitory
provision.

24. (1) The provisions of article 13 of this Act in so far as they substitute article 14 of the principal law shall not apply to any proceedings instituted against any prohibited immigrant prior to the coming into force of this Act and such proceedings shall be governed by the provisions of the principal law as in force prior to the coming into force of this Act.

(2) The provisions of article 13 of this Act in so far as they substitute article 15 of the principal law shall not apply to any event which occurred prior to the coming into force of this Act.

25. Immediately after article 28 of the Probation Act, 2002, there shall be added the following new article.

Amendment of the
Probation Act,
2002, Act VII of
2002.

"References
in other
laws."

29. Any reference in any law to the Probation of Offenders Act, or to Chapter 125 of the Revised Edition of the Laws of Malta shall be deemed to be a reference to this Act, and any reference to articles 5, 9, 12 or to any other provision of the Probation of Offenders Act in any law shall be deemed to be a reference to articles 7, 22, 25 respectively or to the corresponding provision of this Act."

26. The Police Act shall be amended as follows:

Amendment of the
Police Act, Act XIII
of 2002.

(a) in subarticle (2) of article 35 thereof:

(i) for the words "article 121" there shall be substituted the words "article 110"; and

(ii) for the words "the Commissioner shall follow the procedures" there shall be substituted the words "the Commissioner shall, unless otherwise stated in the instrument of delegation, follow the procedures"; and

(b) in subarticle (1) of article 48 thereof for the words "appointed annually" there shall be substituted the word "appointed".

Passed by the House of Representatives at Sitting No. 809 of 4th November, 2002.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives