

INTERNAL AUDIT DEPARTMENT



Immigration Board: Belonger Application Process

June 2012

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MANAGEMENT RESPONSE

Executive Summary

- 1.1 The main findings and conclusions resulting from the audit on the Immigration Board Belonger Application Process are as follows:
 - 1.1.1 The Immigration and Passport Amendment Act, 2000 Section 16 (3) (c) requires that a person has to be ordinarily resident in the Territory for a period of not less than ten (10) years immediately prior to his application. An Executive Council Minute, Memo#367/2004 dated July 20, 2006, invited the Attorney General to draft amendments to this Section of the law to reflect an increase in the number of years for qualification from ten (10) years to twenty-five (25) years. However, no record of amendments being made to the law was discovered.
 - 1.1.2 In moving towards a more transparent and equitable process, the Board has implemented a number of tools through which their decisions to recommend applicants for status are made, they include a points system, a questionnaire on BVI culture and an interview process. These tools have achieved their intended purpose.
 - 1.1.3 In returning their decisions to the Board, Cabinet does not provide any explanation to the Board to indicate the reason why a recommendation was not accepted and subsequently approved. This highlights a serious communication deficiency between the policy making body and the administrators of the function.
 - 1.1.4 To facilitate the administration of the process, the Immigration Department only has one (1) officer, a Senior Executive Officer also known as the Status Unit Officer, dedicated to the function. Such an environment undermines the control of separation of duties as there is no checking within the process and the probably of human error is possible.
 - 1.1.5 Cabinet approved two hundred and twenty four (224) persons who were not considered by the Board and for whom no recommendation was submitted. Cabinet's approval of status in this manner renders the purpose, operations and functioning of the Board null and void as one of the reasons for which they were appointed and engaged is undermined and in some instances ignored.
 - 1.1.6 For those applicants who were awarded status according to the established framework, we found that decisions by the Board based on their applications were adequately documented and the required supporting documentation was maintained. An adequately documented and formal process is in place to ensure that the delivery of status was performed as intended within the appropriate framework. However, we found that as a result of the use of policy guidelines issued by Cabinet instead of the law, applicants were not considered by the Board who did not meet the twenty-five (25) year requirement as stated in the policy. We found that this practice may deny applicants a right duly theirs as the law makes them eligible to apply for status after ten (10) years.

- 1.1.7 The law gives the Board the power to regulate their own procedures. Therefore the Board has autonomy to make its own policies and procedures to govern their affairs. While we understand that the law gives the Board this right, we are concerned that in being free to regulate its own affairs, there will be no monitoring or evaluation of the procedures and guidelines the Board wishes to implement to manage their affairs.

Introduction

- 2.1 Belonger status is a legal classification normally associated with British overseas territories. It refers to people who have close ties to a specific territory, normally by birth and/or ancestry. The requirements for Belonger status, and the rights that it confers, vary from territory to territory.
- 2.2 In the British Virgin Islands, the Department of Immigration through the Board of Immigration facilitates the process of Belongership under the rights of marriage and residency. Under this arm, Belonger Status is granted under the Immigration and Passport Ordinance Cap 130 Section 16. Additionally, the definition of qualifications for Belonger status in the British Virgin Islands is contained in section 2(2) of the Constitution, and includes nine (9) different methods by which a person may be regarded as a Belonger.
- 2.3 In 2004, Government of the Virgin Islands outlined the details of a new immigration policy framework in an effort to add further structure and clarity to the rules surrounding application for Residency and Belonger status and formally committed itself to bestowing status to no more than twenty-five (25) persons a year for those persons applying for status on the basis of having residing in the territory for twenty (20) years.
- 2.4 Over the years, numerous complaints have surfaced referring to the process as a lengthy one and the lack of information as to the status of a person's application within the process. As a result of the implications of this service that Government provides along with its implications on other Government programmes, the need to review the process and the functioning of the Board forms the basis for this exercise.

Prior Audit Coverage

- 3.1 Based on our records, we are unaware of any audit conducted on the Immigration Department's Belonger Application Process within the last five (5) years.

Audit Type

4.1 Performance

A performance audit is an objective and systematic examination of evidence in order to assess the performance of a government organisation, program, activity, or function. The purpose of the performance audit is to provide information to improve public accountability and to facilitate decision-making by parties with responsibility to oversee or initiate corrective action.

Audit Scope

5.1 The audit focused on the Belonger status issued from 2009 to 2011.

Audit Objectives

- 6.1 To give assurance that the system of processing Belonger status applications is transparent and equitable.
- 6.2 To give assurance that controls are adequate to safeguard the system from abusive practices.
- 6.3 To give assurance that the Immigration Board is functioning effectively and in accordance to statutory or policy requirements.

Audit Criteria

- 7.1 In planning and conducting the audit exercise relevant legislation(s), policies and procedures were reviewed.
- 7.2 Documentary evidence in support of our findings and conclusion were derived from Department's reports and files. A sample examination of persons to whom Belonger status was granted for the scope years was also conducted and the results of these testing form part of our audit findings.
- 7.3 Interviews were conducted with pertinent staff from the Department of Immigration. In addition the Chairman of the Board of Immigration was also interviewed to gain an understanding of the Board's operations and the process that governs the awarding of Belonger status.

Audit Limitations

- 8.1 This review was limited to reviewing the process as far as the recommendation phase as auditors were not allowed access to the Cabinet Papers approving individuals for Belonger Status as they were deemed confidential. The lack of information and documentation required to thoroughly assess the process limited the team's ability to adequately assess the entire process, especially at the approval phase or Cabinet level.

Facts and Findings

Objective 1: To give assurance that the system of processing Belonger status applications is transparent and equitable.

The Belonger Status Application process can be divided into three (3) phases. The phases are: an application phase where an application is submitted to the Department of Immigration, a consideration and recommendation phase where an application is reviewed and a recommendation offered by the Board and an approval or denial phase where Cabinet approves or denies a recommendation made by the Board.

- 9.1 In meeting the requirements for obtaining Belonger Status, the Immigration and Passport Amendment Act, 2000 Section 16 (3) (c) requires that a person has to be ordinarily resident in the Territory for a period of not less than ten (10) years immediately prior to his application. An Executive Council Minute, Memo#367/2004 dated July 20, 2006, invited the Attorney General to draft amendments to this Section of the law to reflect an increase in the number of years for qualification from ten (10) years to twenty-five (25) years. *See Appendix I for the guidelines laid out in the law and policy.* However, no record of amendments being made to the law was discovered. The Board currently uses the policy established in 2006 in evaluating candidates for Belonger Status. Although, this practice does not reflect an unlawful recommendation of status, the application of this policy without the necessary amendments to the laws, deprives applicants from being considered and possibly subsequently approved for status in a shorter period of time.
- 9.2 In an effort to improve their decision making process and to bring transparency and equity to the Belonger Application Process, the Board approved and implemented various tools to evaluate and recommend applications.
- 9.2.1 A Point System - the point system stipulates ten (10) different areas that relates to an applicant's lifestyle under which they can obtain scores. However, if an applicant does not meet certain aspects of the point system, their final score is determined only by those areas that relate to them. For example, someone who is a full time student would not be able to obtain points under the employment status category; therefore that category will not play any part in determining the final score for that individual. From Board Minutes reviewed the audit team found that the Board conducted numerous deliberations on implementing this decision making tool.

- 9.2.2 An Interview Process – this is done before applications are considered by the Board. The panel is made up of Board Members and Senior Staff from the Immigration Department. During this process applicants are interviewed and any additional information from other Government agencies that is required to make a prudent decision is obtained.
- 9.2.3 A cultural questionnaire with ten (10) questions is compiled by the Senior Executive Officer in place of a Cultural Assessment Course, which was being explored to be administered by the H. Lavity Stoutt Community College (HLSCC). The questions are compiled from information within four history (4) books by local authors. It is uncertain when the Cultural Course at HLSCC will manifest, but it was discovered from the review of files that discussions have been conducted with the College and the Department of Culture in moving this course forward.
- 9.2.4 The audit found that these tools are yielding the desired results and do commend the Board for taking such actions.
- 9.3 Applications are selected from a ‘queue’ based on the qualifying year and the date of application. The queue consists of a listing of all applications submitted for Belonger Status that were deemed complete. From this list, the Board selects applicants to be interviewed according to the date when their application was submitted and if they meet the requirements to qualify for status based on Policy Decision 367/2004.
- 9.4 There is no set time frame as to when an application for Belonger Status will complete the process and Belonger Status awarded. The Audit team found that applicants are given initial communication on their application when their application is submitted and subsequently deemed complete. The letter simply indicates that their application was received with a list of supporting documents, is deemed complete and is placed in queue for consideration by the Board. No further information is received by applicants from this initial communication until they are contacted for an interview, which we have observed may happen several years after an application is submitted. The lack of information on how the process will progress causes public’s perception of the process to be frustrating and inefficient.
- 9.5 During the course of the audit, the Audit Team was made aware that there were numerous applications that were awarded outside the standard framework established by law and policy. It was revealed that Cabinet approved some two hundred and twenty four (224) persons who were not considered by the Board and for whom no recommendation was submitted. In some instances, persons did not even make a formal application for the status before it was approved. However, these individuals have not yet received status as the manner in which the status was awarded is questionable and could be deemed illegal. Advice is being sought from the Attorney General’s Chambers to deal with these applications.

- 9.6 While we agree that Cabinet is the ultimate deciding body in granting Belonger status, the awarding of this status in the manner creates an inequitable situation for the three hundred and thirty-four (334) persons whose applications is still to be considered and recommended by the Board. Additionally, it removes any level of transparency within the process as there is no clear justification to indicate the merit of the decision.
- 9.7 The audit also discovered that no explanation is provided to the Board by Cabinet for applicants who were recommended by them but for whom Cabinet did not approve. Again, we find that this lack of communication also creates an environment that is not transparent as no clear reason is given as to why decisions are taken contrary to the recommendations made by the Board. Additionally, the Board cannot then adequately assess their decisions in recommending applicants.

Objective 2: To give assurance that controls are adequate to safeguard the system from abusive practices.

- 9.8 The Senior Executive Officer within the Immigration Department is responsible for all the administrative functions related to the Belonger Application Process in addition to the Residency Application Process. A copy of the officer's Job Description is detailed in *Appendix II*. The Audit revealed that the magnitude of work required for the efficient and effective flow of the process is greater than the human resources assigned to the function. An environment such as this raises a number of control issues that needs to be highlighted.
- 9.8.1 With one officer in charge of multiple functions within one Unit – the control of separation of duties is undermined as there are no checks and balances in place.
- 9.8.2 The process becomes impeded should the officer become ill or unavailable.
- 9.8.3 Such a working environment can also cause employee burnout and low employee morale.
- 9.9 A listing of persons receiving Belonger status for scope years 2009 to 2011 was requested and reviewed in an effort to determine whether applicants received status based on established law and policy. The audit found that of the seventy-seven (77) persons to whom status was granted only forty-five (45) of those persons were awarded status within the framework of the law. Of the remaining number, twenty-nine (29), although an application was submitted to the Board, they did not go through the established process. *Table 1 below depicts this summary*. The granting of these status raises some concerns as to adequacy of the controls within the process:

- 9.9.1 Bearing in mind that the twenty-nine (29) individuals who were not recommended by the Board for Belonger Status did not go through the formal process as described in *Appendix III*, this would then render that the basis on which a decision was made to grant them status is questionable and possibly unlawful. Furthermore, no due diligence was conducted and therefore it is possibly that the basic requirements for awarding of status were not met.
- 9.9.2 If the required due diligence was conducted then Cabinet would have been aware that the three (3) persons to whom status was awarded already possessed status and should not have been awarded again. This would not have resulted in a duplication of status being granted to persons.

Table 1: Belonger Status awarded 2009 to 2011

Category/Year	2009	2010	2011	Total
Persons approved for Belonger Status	20	5	52	77
Applications recommended by the Immigration Board and approved by Cabinet	20	5	20	45
Persons for whom a recommendation was not forwarded to Cabinet for approval but were awarded status	0	0	29	29
Persons who already possessed Belonger status but were approved by Cabinet	0	0	3	3

- 9.10 For those applications that we reviewed that followed the established framework, we found that the decisions made by the Board on status recommendations were adequately documented and the required supporting documentation was maintained. An adequately documented and formal process is in place to ensure that the delivery of status was performed as intended within the appropriate framework. However, we found that as a result of the use of policy guidelines issued by Cabinet instead of the law, applicants were not considered by the Board who did not meet the twenty-five (25) year requirement as stated in the policy. We found that this practice may deny applicants a right duly theirs as the law makes them eligible to apply for status after ten (10) years.
- 9.11 A second listing outlining the names of persons to whom status was awarded outside the established framework of the law was also submitted. This list totalled two hundred and twenty-four (224) persons. From this listing, the audit team identified one hundred and ninety (190) instances where, at the date of the audit exercise, persons did not submit an application or supporting documentation. The audit team also identified one (1) instance where an individual already possessed Belonger Status. The table below summaries this information.

Table 2: Belonger Status approved by Cabinet outside the framework of the law

Category/Year	2009	2010	2011	Total
Persons who were awarded status outside the framework of the Law	0	0	224	224
Persons who applied before status was approved but Board did not recommend	0	0	32	32
Persons who applied after status was awarded	0	0	1	1
Persons who did not apply	0	0	190	190
Persons who already possessed status	0	0	1	1

- 9.12 Furthermore, it was revealed that the names of the individuals on this second listing were added at the Cabinet level based on personal representations by Members. Therefore, these names would not appear on the Cabinet Paper presented by the Premier's Office from the Board's recommendations. This means that the basic legal requirements of an application being made and consideration by the Board were not met. The only basis on which one can judge status that were awarded in this manner is that the individuals made personal representation to a Member and approval came as a result. The awarding of status in this manner further raises a number of control issues, as to the authority of Cabinet Members in operating contrary to established laws and policies. This is even more alarming especially as this issue is at the highest level of approval within the process.
- 9.13 Applications should be supported by original copies of required documents. The application form should also be notarised by a notary public, commissioner of oaths or justice of the peace in the Territory and signed by the applicant indicating their intention to make the BVI their permanent home and that the information stated in the application is correct and true. The Audit Team reviewed the seventy-seven (77) applications for which status was approved to identify if the applications were notarised. Of the applications reviewed, we found that all applications submitted and subsequently approved were notarized. Furthermore, bearing in mind that a notarized document is a recognized legal document, raises the concern that approving status without this legal contract maybe questionable and expose Government to risks that are covered in the process of applying for status before it is awarded.

- 9.14 As laid out in the law, the application form provides a 'For Official Use Only' section for requisite officials to sign, date and forward for further processing. The Chief Immigration Officer, Board of Immigration and Executive Council (Cabinet) are the requisite officials designated to sign off on these applications. From our testing it was found that this section of all the applications was not completed. Additionally, actual applications submitted are not submitted to Cabinet unless a request is made for the file to be presented. Instead, a separate file is kept with a revised form that was created by the Unit. The reason given for the use of this new form was to reflect the correct flow of the application through the process. The Audit Team is concerned that by not using this Section removes a number of controls that it aims to administer within the process:
- 9.14.1 It establishes a chain of custody through the process that creates a system of responsibility and accountability.
 - 9.14.2 It provides verification that the requisite officials have duly conducted their role within the process and that all deciding parties involved are aware as to the position of each.
 - 9.14.3 It provides data for informative purposes to monitor the process flow.
- 9.15 The Audit revealed that there was a duplication of effort within the functions of the Status Unit. The Officer within the Unit maintains two (2) log books related to the Belonger Application Process, a Belonger Application Status Register and a Belonger Status Register. The application register is for the logging of all applications submitted to the Unit. The Status Register keeps track of approved applications and assigns file numbers to each person to whom status is awarded. Although not required to, the officer also maintains three (3) excel spreadsheets, in an effort to assist with the efficiency and statistical data collection for the process. Again, the officer is only person who maintains these files. As such, it was indicated that these spreadsheets are not kept current as data entry is time consuming and the officer at times is overwhelmed with the functions of the Unit.
- 9.16 To ensure the security and accountability of documents submitted with applications, a formal approach to documenting the receipt of applications and the return of applications is utilized. Each application submitted is reviewed for completeness by the Senior Executive Officer. Applications deemed complete, are logged in the Department's Belonger Applications log book and a letter listing the documents submitted to support the application is prepared. Applicants are then contacted to collect the letter from the Department, which indicates the completeness of their application. If applications are deemed incomplete, they are returned to the applicant. Applications and documents being returned are done through a formal process where applicants are also contacted and asked to collect their application and documents from the Department. Upon receipt of these documents, applicants are required to sign a return receipt letter indicating that their application is incomplete and is being returned to them with the supporting documentation. Letters from the Status Unit are not dispatched through the local postal

system but applications are contacted by telephone numbers provided. If the applicant does not collect the letter, it is held and placed on file until they do.

9.17 The Immigration Department has one (1) centralized location for filing which is accessible by all officers of the department. Files and records pertaining to the Belonger Application process are kept in this location and in the Senior Executive Officer's office. It was stated that the Status Unit Officer is the only individual who deals with files from these locations. However, all officers within the Department have access to the filing room and the room is not kept locked, while the Senior Executive Officer's office is kept locked in her absence. Although, there are other security mechanisms in place within the Department to gain access to the general office area, no security or tracking mechanism is in place to track the movement of files from the filing room. Despite the fact that no other officer within the Department is charged with dealing with these files, the mere fact that the filing room is accessible by all officers of the department and no log is kept on the usage of files, we are concerned as to the risks involved such as the lost of documents and/or applications.

9.18 In reviewing the legislation and from interviews conducted, it was revealed that there were a number of sections in the law that could cause persons to abuse status and issues that have been long-standing concerns of the Board. There is no stipulation in the law that prohibits second (2nd) tier Belongers from passing on status. Additionally, the Board continues to be concerned about persons seeking status on the basis of marriages of convenience. It was reported in the 2009 report that there was an increase in the number of requests from BVIslander spouses for the revocation of status to their spouses. It would appear that persons granted status on this basis used this avenue as a ploy to obtain the status and after it was awarded, the relationship changed.

Objective 3: To give assurance that the Immigration Board is functioning effectively and in accordance to statutory or policy requirements.

9.19 The Immigration and Passport Amendment Act 2000, Sections 13, 14 and 15, is the legislation under which the Board of Immigration operates. It gives the Board the power to regulate their own procedures. As a result of this autonomy, the Board is free to make its own policies and procedures to govern their affairs. While we understand that the law gives the Board this right, we are concerned that in being free to regulate its own affairs, there will be no monitoring or evaluation of their functions or operations.

9.20 In governing their operations and the role they have been appointed to fulfil the Board has implemented a number of tools to govern and improve the manner in which their affairs are conducted. These include:

9.20.1 The introduction of the point system and a cultural questionnaire used in assessing applications for Residency and Belonger status. Prior to the implementation of the point system and cultural test, the process could be viewed as very subjective as there was no formal basis on which recommendations for status was made. To

remove this subjectivity the Board undertook discussions and implemented this objective method. The Board commenced use of these tools on July 22, 2010.

- 9.20.2 Submitting proposals and recommendations to the Premier to have amendments made to the Act to reflect current changes/trends relating to immigration matters across the world. We found various recommendations made in minutes and subsequent reports to the governing Ministry to assist policy makers with decisions. Although, we cannot definitely ascertain whether the recommendations of the Board are considered and thereby implemented, the records clearly reflect that the Board continues to highlight various issues observed and submit recommendations for improvement and control.
- 9.20.3 The implementation of seven guiding principles that fosters a level of integrity in its operations and to which each member of the Board is held.
- 9.21 Meetings are held twice per month on the second and fourth Thursday of every month. The Audit Team found that information pertaining to each meeting held by the Board was documented and subsequently approved and signed off by the Chairman. This information is also submitted to the Premier's Office for informative and decision making purposes. Additionally, minutes for meetings conducted with the Premier's Office and the Premier are documented.
- 9.22 In facilitating the Belonger Application process, the Board uses the policy decision in Executive Council's Memo 367/2004 which laid out administrative guidelines for the processing of applications for Residence and Belonger Status, instead of the Immigration and Passport Act (Amendment) 2000. The audit team finds it necessary to highlight the irregularity in the use of policy over law as both guidelines do not mirror each other. By administering the policy over the law, the Board is in essence denying persons due consideration at the ten (10) qualifying year seeing that the law was never made to reflect the change desired by Executive Council to twenty-five (25) years as laid out in their policy decision. *See Appendix I for the guidelines the law outlines and the policy decision guidelines.*
- 9.23 While the Board has no authority to approve applications for Belonger Status, their role within the process is that of an intermediary and investigative one. It is possibly the most important point as it is at this point information is verified and validated so that sound and accurate decisions can be made. Sections 16 (1) and 18 (1) of the Immigration and Passport (Amendment) Act 2000 states that persons must apply for status and that there must be consultation with the Board of Immigration. While Cabinet may agree or disagree with the recommendations made by the Board, Cabinet's decision can only follow after there has been an application and a consultation with the Board. As stated previously, by Cabinet approving the two hundred and forty-two (242) individuals in 2011 for Belonger Status renders the operations of the Board useless in fulfilling their role and illegal.

9.24 The audit also revealed a number of challenges encountered by the Board and by the Department in carrying out its functions. These include:

9.24.1 The inability to address certain issues as the current Act does not specifically address issues currently being manifested within the Territory. In addition, the application form being used is outdated as it does not accurately capture all of the information required and reflect the flow of applications through the process.

9.24.2 The separation of labour and immigration functions creates issues for the Immigration Department, as the decision made at the Labour Department has bearing on the decision made at Immigration.

9.24.3 Public's misunderstanding and perception that Belonger Status is automatic and as a result they believe that they are being treated unfairly. The law reflects that status may be awarded upon an application being submitted, considered by the Board and approved by Cabinet. The status is in no way automatic.

9.24.4 No reason is provided by Cabinet when a decision is made to deny a recommendation for Status by the Board. Therefore, the Board is unable to adequately assess the decision they made in recommending an individual.

9.24.5 Individuals being made aware that they had been awarded status before the Immigration Department are informed.

Recommendations

10.1 It is recommended that amendments be made to the Act to make it more reflective of issues and realities that exist in the global arena as it relates to immigration and the award of status.

10.2 It is further recommended that the policy decisions that were outlined in Executive Council's decision Memo 367/2004 be amended in the Immigration and Passport Act to ensure that both policy and law are in sync and so that there is no confusion in administering the guidelines.

10.3 It is recommended that a structured and staffed Status Unit be established to handle the various aspects of the process and matters relating to the processes. The magnitude of work required for the efficient operation of the Unit requires the necessary human resources to sustain it. Additionally, it is required so that adequate controls can be in place to prevent and deter any wrong doings from occurring.

10.4 It is recommended that the 'For Official Use Only' section of the application to be utilized as part of the process until amendments are made to modify the application to reflect the reality of what is occurring.

- 10.5 It is recommended that a Public Awareness Campaign be undertaken to educate the members of the public on the Belonger Application Process. This initiative will help to provide information that will assist members of the Public in understanding the various phases and aspects of the process and clarify any misunderstandings they may have about the process.
- 10.6 It is recommended that a database to manage the processing of applications be researched and explored. In the short term modifications of the current excel spreadsheets used by the Senior Executive Officer should be undertaken to add greater efficiency and information on applications and their positions through the process.
- 10.7 It is also recommended that whenever a decision is made by Cabinet or the Board to deny approval of status for an applicant, clear reasons as to why the decision was taken should be documented, especially for those cases where the Board made a recommendation and it was denied by Cabinet. This will help to ensure that transparency, equitability and justification behind the decision taken.
- 10.8 It is recommended that an adequately structured file management system be implemented at the Immigration Department. This will assist in tracking the movement of files within the Department and assist in ensuring records are secured and being accounted for in an appropriate manner.
- 10.9 It is uncertain if an increase in the number of times the Board meets will assist in reducing the outstanding applications. Bearing in mind that the Board is governed by the law and policy, it is recommended that an estimated timeframe be determined for the processing of applications, as Government is in the business of providing services to the Public and these services should be performed within adequate timeframes.

Conclusion

- 11.1 We applaud the efforts of the Board in implementing tools to bring transparency, equity and to assist with the decision making process on Belonger status applications. The Board's role within the process creates a level of control where the information on applications are reviewed, verified and validated. It forms a central basis on which Cabinet can make a sound and accurate decision on an application. The law, policy and formal processes and procedures create a structured environment in which decisions can be made and transparency and equity can be established. However, the law, the policy and the procedures should mirror each other to avoid any confusion or misinterpretations in facilitating the process. When transparency and equity is removed from any process it creates doubt in the eyes of the public as to the integrity of the systems and processes.
- 11.2 We have concluded that in the awarding of Belonger Status the Board has executed its role in an admirable manner. However, we have also concluded that the process has been significantly compromised by Cabinet's gross abuse of its authority. The process used by Members of Cabinet lacked both transparency and objectivity. Cabinet, which in our estimation is a policy setting body, unnecessarily circumvented the law, policy and process and failed to ensure that the process they used was transparent, objective and that their decisions were based on sound advice and accurate information. We are not questioning Cabinet's authority to approve status as it is their privilege to approve or disapprove an application. However, we are concerned that when this is done contrary to the law and policy and there is no sound basis or reason given for the decisions made it erodes the integrity of the process. If Cabinet, as a matter of their right, disregards a process after the process is established in law and policy, then the fundamental principle of the transparency and equity within the process is severely undermined, if not destroyed.
- 11.3 In addition, we found that Cabinet, by taking it upon themselves to approve persons who were not vetted by the Board or did not even submit an application, removed from the Board the ability to scrutinize the applicants thereby rendering the Board's role null and void. Furthermore, it is our opinion that the practice whereby Cabinet approves status for individuals who were not vetted by the established process creates an environment in which favouritism, cronyism, and corruption can flourish.

APPENDICES

**APPENDIX I
LEGISLATION AND POLICY**

Belonger Status Legislation and Policy

The Immigration and Passport Ordinance Cap 130 outlines the following:

Part IV Section 16 (1)

*“Subject to the provisions of this section, the Governor in Council, after consultation with the Board, **may upon application being made in the manner prescribed grant a certificate certifying that the person who applied for the same belongs to the Territory for the purposes of this Ordinance.**”*

Part IV Section 16 (2) (a-c)

“A person may be granted a certificate referred to in subsection (1) where

9.24.6 he qualifies under subsection (3);

9.24.7 There has been an exercise in relation to him of the power set out in subsection (4);

9.24.8 He or she is a spouse of a Belonger and meets the requirements set out in subsection (5) and is not disqualified thereunder.”

Part IV Section 16 (3)

“Subject to subsection (4), a person may be granted a certificate referred to in subsection (1) where he:

- a) *“Is of good character;*
- b) *Is not less than eighteen years of age;*
- c) ***Has been ordinarily resident in the Territory for a period of not less than ten years immediately prior to his application;***
- d) *Has held a certificate of residence granted under section (18) for a period of not less than twelve months immediately preceding the date of the application; and*
- e) *Has, in his application, restated his intention of making the Territory his permanent home and has satisfied the Board that it is his intention so to do.”*

Section 7 states

“In deciding whether a certificate should be granted pursuant to subsection (2) (a) or (b) in respect of any applicant, the Governor in Council shall consider whether

- a) *The economic situation in the Territory is such that the grant of a certificate to the applicant will prejudice the protection afforded under this Ordinance to other persons engaging in the trade or profession in which the applicant is engaged or in which he is likely to engage;*

- b) *The applicant has established a close personal connection with the Territory;*
- c) *The applicant's character and previous conduct are unexceptional; and*
- d) *The applicant's continued residence in and association with; the Territory may afford some advantage to the Territory.*

Additionally, the 2000 amendment also outlined that *“For the purposes of this Ordinance a person shall be deemed to belong to the Territory if that person so qualifies under section 2(2) of the Virgin Islands (Constitution) Order 1976.”*

The Immigration Regulations 1981 Section 49.3 (1) further states that:

- a) *“The form of the application for a certificate that a person belongs to the Territory under Section 16 of the Ordinance is set out in Form I of the First Schedule.”*

The Immigration and Passport Ordinance Cap. 130 Part III Sections 13 (amended in 2000), 14 and 15:

Section 13 reflects:

- a) *“There shall be a Board called “The Board of Immigration” consisting of the Chief Immigration Officer and eight members who shall be appointed by the Governor acting on the advice of the Minister.*
- b) *The Governor acting on the advice of the Minister shall appoint one of the Members to be Chairman of the Board.*
- c) *If the Chairman is unable to attend a Board meeting because of illness, absence from the Territory or other cause and the Governor does not appoint someone to act during his inability to attend, the Board appoint someone from among their own number to be Chairman for that meeting.*
- d) *The Board may act by any five of its members notwithstanding any vacancy in the number of members constituting it.*
- e) *The Board shall have power to regulate its own procedure.”*

Section 14 reflects:

- a) *“Subject to the provisions of Section 15 the Board shall be advisory and consultative and shall have no executive or administrative functions.*
- b) *It shall be the duty of the Board to advise upon all questions concerning or connected with the entry of persons into the Territory and the residence and occupation in the Territory of persons who do not belong to the Territory (hereinafter in this Ordinance referred to*

“designated matters”), which may be referred to the Board by the Minister or the Chief Immigration Officer and further it shall be competent for the Board to make recommendation to the Minister or Chief Immigration Officer in connection with such questions without previous reference.”

Section 15 reflects - *“The Board shall*

- a) *Cause to be made enquiries as they think expedient or as the Minister may require in respect of any matters concerning or connected with any of the designated matters or in any respect of any other matters in respect of which their permission, approval, or consent or the permission, approval or consent of any immigration officer is required under this Ordinance.”*

Executive Council’s [Cabinet] policy approved on July 20, 2006 on the granting of Residence and Belonger Status (Memo 367/2004). The policy outlined the following administrative guidelines for the Board of Immigration in the processing of applications for Residence and Belonger Status:

- a) *“In the case of persons who had applied before 1 January 2003, recommendations for residence status should be made for all those who had lived continuously in the Territory for over 20 years and who qualify after the normal screening process,*
- b) *The outstanding backlog of such applications (approximately 365) should be submitted in chronological order and batches of 50 by date of application to the Chief Minister in the course of 2005*
- c) *Once the backlog of those identified at (b) [8.1.2] had been cleared, the Board should make recommendations as applicants reached the 20th anniversary of their arrival in the Territory after the normal screening process.*
- d) *In the case of those who had applied after 31 December 2002 recommendations for Residence Status should be made for no more than 25 persons each year;*
- e) *In the case of applications for Belonger Status, the Board should make recommendations in respect of no more than 25 persons per year from those already in possession of a Certificate of Residence; and*
- f) *In all cases, periods of continuous residence in the Territory means a maximum of 90 days absence in any calendar year excluding absence to pursue further education.”*

In the same Executive Council Minute (Cabinet Paper), Executive Council [Cabinet] also invited the Attorney General to draft amendments to the Immigration and Passport Act (Cap 130) to:

- a) *“Ensure Belonger Status for children born outside the Territory to a Belonger parent whose entitlement to belongingship was by descent*
- b) *Grant Belonger Status to all children born in the BVI to non-Belongers*
- c) *Expand the qualification for Residence Status along the line of the requirements for Belonger Status, and*
- d) *Increase the qualifying period for Belonger Status from 7 and 10 to 25 years.”*

Cabinet in its constitutional right has the responsibility according to Section 47 (4) of the Virgin islands Constitution Order 2007 for *“the formulation of policy, including directing the implementation of such policy, insofar as it relates to every aspect of government, except those matters for which the Governor has special responsibility under section 60, and the Cabinet shall be collectively responsible to the House of Assembly for such policies and their implementation”*.

APPENDIX II
SENIOR EXECUTIVE OFFICER (STATUS UNIT OFFICER)
JOB DESCRIPTION

GOVERNMENT OF THE BRITISH VIRGIN ISLANDS



JOB SPECIFICATION AND DESCRIPTION

JOB TITLE:	Senior Executive Officer	
MINISTRY:	Chief Minister's Office	
DEPARTMENT:	Immigration	
SECTION/UNIT:	Status Unit	
REPORTS TO:	a. Directly:	Chief Immigration Officer
	b. Indirectly:	Chairman, Board of Immigration
SUPERVISES:	a. Directly:	
	b. Indirectly:	

JOB SPECIFICATION

JOB SUMMARY:

To effectively manage the functions of the Immigration Department Status Unit and to provide efficient service to the Immigration Board.

MINIMUM QUALIFICATIONS & EXPERIENCE:

-
- Associates Degree in Business Administration
- 5-10 years working experience in a senior secretarial field
-
-

%20Clerical%20Trainee

KNOWLEDGE & SKILLS:

- Good supervisory, management and organizational skills
- Excellent command of English Language
- Sound interpersonal skills
- Ability to read, write and speak clearly
- Ability to maintain a courteous, friendly, and pleasant environment
- Mature, self-motivated, independent individual
- Versed in Government procedures, immigration procedures/policies, and necessary sections of Immigration & Passport Ordinance, British Nationality Act and Constitution Order 2007.

WORKING CONDITIONS:

- Air conditioned environment

JOB DESCRIPTION

JOB FUNCTIONS:

1. Serve as Secretary for Board of Immigration
2. Preparation for Belonger Status and Residence Ceremonies
3. Perform Clerical Duties for the Unit (creating files, filing, typing, photocopying, etc)
4. Conducting Interviews
5. Delivering Courteous Assistance to the Public
6. Supervising staff of the Unit
7. Preparation of Annual Reports
8. Respond to All Queries from the Public
9. Any Other related duties

This document is a true and accurate description of the position.

INCUMBENT

DATE

SUPERVISOR

DATE

%20Clerical%20Trainee

APPENDIX III
BELONGER APPLICATION STATUS PROCESS AND FLOWCHART

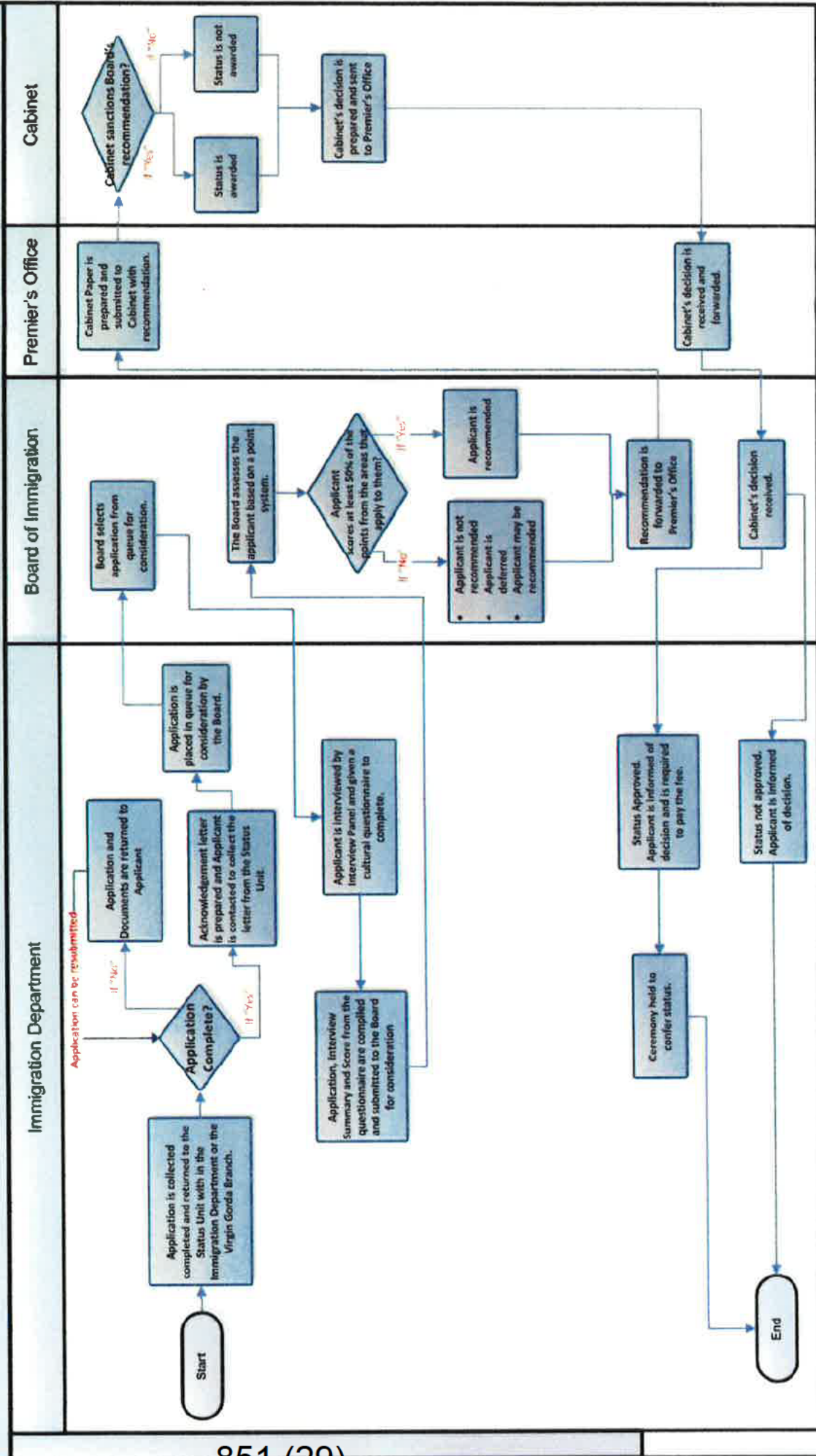
BELONGER STATUS APPLICATION PROCESS

To govern the granting of Belonger Status, the Immigration Department and Board of Immigration have a structured process in place. The process is as follows:

1. An application is collected, completed and then submitted to the Status Unit of the Immigration Department or to the Immigration Department in Virgin Gorda.
2. The submitted application is reviewed by the Unit for completeness.
3. Once the application submitted is reviewed and deemed completed, the applicant is contacted to collect an acknowledgement letter from the Status Unit. If the application is incomplete, the applicant is also contacted and asked to meet with the Status Unit Officer who explains what information is required for the application to be deemed complete. A letter is prepared indicating that the application is incomplete. At the bottom of this letter the applicant has to sign indicating that their submitted application was incomplete and confirmation that the application and supporting documents were returned to them.
4. Completed applications are placed in queue for consideration by the Board of Immigration. These applications are placed in queue based on qualifying year and whether the status is being granted based on marriage or residency status. In considering applicants to be interviewed the Board is guided by the following:
 - a) Policy decision 367/2004 where Executive Council [Cabinet], approved a policy that no more than twenty-five (25) applicants per year for those applicants who possess a certificate of residency be considered for Belonger Status. Applicants must be in possession of a Certificate of Residency for at least one year and be residing continuously in the Territory.
 - b) There is no quota for applicants seeking Belonger status by marriage. However, each applicant should satisfy a five year residency period in the Territory with his or her spouse as husband and wife to be considered.
5. The Board decides which applicants from this queue are to be interviewed. Applications are selected from this queue based on the date of the application and the qualifying year. Applicants are interviewed by an Interview Panel and during the interview a cultural questionnaire is administered.
6. Applications and Interview summaries outlining the personal details along with the score obtained from the cultural test are prepared by the Status Unit Officer and submitted to the Board of Immigration for consideration.

7. In considering applications the Board utilizes a point system to screen all applicants. Applicants obtain scores for each category on the point system (education, employment, knowledge/experience and financial assessment, etc.). If an applicant acquires at least fifty percent (50%) of points from the areas which are applicable to them, that application is recommended. If they acquire less than 50% of the points, applications are not recommended. In cases where applications are deferred or not recommended, reasons are provided for the deferral or non-recommendation. The summary information that is forwarded to Premier's Office includes both those applicants recommended by the Board along with those who were not recommended.
8. Minutes for each Board Meeting held are prepared and signed by the Chairman. Copies are forwarded to the Premier's Office, along with all documentation for matters discussed at the meeting. This includes the applicant's summary sheet and agenda for the meeting.
9. The Premier's Office as the governing Ministry prepares a Cabinet paper for Cabinet's consideration and subsequent approval or denial of Status.
10. Cabinet reviews recommendation and approves or denies the recommendation made.
11. Cabinet Paper is prepared stating the persons to whom status has been awarded and submitted to the Premier's Office.
12. The Premier's Office subsequently submits the Cabinet Paper to the Department of Immigration for preparation of certificates and ceremony to confer status.
13. Applicants are informed of the award of status and are required to go into the Department of Immigration pay the requisite fee for status.
14. Ceremony is held to confer status.

Immigration Department: Belonger Application Process



MANAGEMENT RESPONSE

MANAGEMENT'S RESPONSE

10.0 Recommendations

- 10.1 It is recommended that amendments be made to the Act to make it more reflective of issues and realities that exist in the global arena as it relates to immigration and the award of status.

Agree/Disagree	Agree
Corrective action planned	Implement numerous recommendations forwarded by Board to Premier's Office
Anticipated completion date	November, 2012
Names(s) of contact person(s) responsible for corrective action	Permanent Secretary, Desk Officer for Immigration [REDACTED]

- 10.2 It is further recommended that the policy decisions that were outlined in Executive Council's decision Memo 367/2004 be amended in the Immigration and Passport Act to ensure that both policy and law are in sync and so that there is no confusion in administering the guidelines.

Agree/Disagree	Agree
Corrective action planned	Take action required to make policy law
Anticipated completion date	March, 2013
Names(s) of contact person(s) responsible for corrective action	PS/Desk Officer

[REDACTED]
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- 10.3 It is recommended that a structured and staffed Status Unit be established to handle the various aspects of the process and matters relating to the processes. The magnitude of work required for the efficient operation of the Unit requires the necessary human resources to sustain it. Additionally, it is required so that adequate controls can be in place to prevent and deter any wrong doings from occurring.

Agree/Disagree	Agree
Corrective action planned	Hire 3 persons at clerical level to work in Status Unit to support the SEO. Candidates must be computer literate, mature, confidential and knowledgeable of residents.
Anticipated completion date	September, 2012
Names(s) of contact person(s) responsible for corrective action	HR/Premier's Office

- 10.4 It is recommended that the 'For Official Use Only' section of the application to be utilized as part of the process until amendments are made to modify the application to reflect the reality of what is occurring.

Agree/Disagree	Agree. Currently this section is mostly utilized when applications are denied. It could be utilized to a greater extent and in the manner alluded to in the draft report
Corrective action planned	Utilize the "Official Use" section of form to note movement from one stage of process to next. Review form and recommend revisions.
Anticipated completion date	August, 2012
Names(s) of contact person(s) responsible for corrective action	Chief Immigration Officer/SEO/Status Unit

- 10.5 It is recommended that a Public Awareness Campaign be undertaken to educate the members of the public on the Belonger Application Process. This initiative will help to provide information that will assist members of the Public in understanding the various phases and aspects of the process and clarify any misunderstandings they may have about the process.

Agree/Disagree	Agree
Corrective action planned	Engage GIS and Director of Communication to carry out campaign for both Residence and Belonger Status Application Process. This education process should come on stream with the introduction of the new policy.
Anticipated completion date	March 2013
Names(s) of contact person(s) responsible for corrective action	Information Officer, Premier's Office, Desk Officer

- 10.6 It is recommended that a database to manage the processing of applications be researched and explored. In the short term modifications of the current excel spreadsheets used by the Senior Executive Officer should be undertaken to add greater efficiency and information on applications and their positions through the process.

Agree/Disagree	Agree
Corrective action planned	Deputy Chief Immigration Officer to discuss with DoIT
Anticipated completion date	September, 2012
Names(s) of contact person(s) responsible for corrective action	Deputy Chief Immigration Officer

- 10.7 It is also recommended that whenever a decision is made by Cabinet or the Board to deny approval of status for an applicant, clear reasons as to why the decision was taken should be documented, especially for those cases where the Board made a recommendation and it was denied by Cabinet. This will help to ensure that transparency, equitability and justification behind the decision taken.

Agree/Disagree	Agree
Corrective action planned	Premier's Office will write this into the Cabinet Decision Section of the Cabinet Papers
Anticipated completion date	N/A
Names(s) of contact person(s) responsible for corrective action	Desk Officer/Permanent Secretary

- 10.8 It is recommended that an adequately structured file management system be implemented at the Immigration Department. This will assist in tracking the movement of files within the Department and assist in ensuring records are secured and being accounted for in an appropriate manner.

Agree/Disagree	Agree
Corrective action planned	Needs a file manager (records officer) and a filing system (electronic) within the unit to promote seamless continuity of operations in the absence of the SEO. PO to get its Records Officer to assist
Anticipated completion date	October, 2012
Names(s) of contact person(s) responsible for corrective action	Desk Officer, Records Officer (PO), HRM (PO)

- 10.9 It is uncertain if an increase in the number of times the Board meets will assist in reducing the outstanding applications. Bearing in mind that the Board is governed by the law and policy, it is recommended that an estimated timeframe be determined for the processing of applications, as Government is in the business of providing services to the Public and these services should be performed within adequate timeframes.

Agree/Disagree	Disagree
Corrective action planned	Time frame is largely dependent on the support system available, the file management system, clear policy/law to promote transparency and the compliance of Cabinet Members with the system.
Anticipated completion date	
Names(s) of contact person(s) responsible for corrective action	