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**IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS COMMISSION OF INQUIRY 2021
AND THE COMMISSION OF INQUIRY ACT (CAP 239) (THE 'ACT')**

FOURTH AFFIDAVIT OF JOSEPH SMITH ABBOTT

I, Joseph Smith Abbott, Pusser's Warehouse, 3rd Floor, Road Town, Tortola, VG1110, Virgin Islands, Acting Permanent Secretary, **MAKE OATH** and **SAY** as follows:

Introduction

1. I am the Acting Permanent Secretary of the Ministry of Natural Resources, Labour and Immigration (the '**Ministry**'). I have served in this capacity since 17 May 2021. The statements made in this Affidavit derive from information and documents reviewed during the course of my role as Acting Permanent Secretary, and are true to the best of my knowledge, information and belief.
2. I make this Affidavit on behalf of the Hon Vincent O Wheatley as a result of the letter sent to him on 29 July 2021 by Ms Rhea Harikissoon, Solicitor to the Commission of Inquiry (the 'COI') (the '**Request**') entitled 'the Minister for Natural Resources, Labour and Immigration – Request for an Affidavit No.4'.
3. In this Affidavit, where I mention a document, I do not waive any privilege asserted in respect of it unless I do so expressly.
4. I shall refer in this Affidavit to the exhibit marked 'JSA-4', which is a paginated bundle of documents.

Introduction

5. At the outset of this Affidavit, I would like to offer the Commissioner my sincere apologies for the fact that in the 14 working days allowed to respond to the Request, I have not been able to fully address each of the 18 detailed questions and three disclosure requests set out in the Request (see Request at pages 1-6 of JSA-4).
6. As previously explained to the Commissioner in correspondence and in my Third Affidavit sworn on 17 August 2021, the Ministry has been under enormous strain in recent weeks. My ability to respond to the request has been significantly impacted by disruption to my team caused by the Coronavirus surge during July and August 2021, by staff absence and by office closures.
7. I have done my best to respond to the questions set out in the Request as well as I am able to do. My team and the Cabinet Secretary have worked outside office hours to produce documentation requested, and a bundle of around 90 confidential documents consisting of Cabinet Papers in respect of Belongership Applications over the past decade will separately be provided to the COI Team today. Privilege and confidentiality in those documents is not waived by so stating.
8. I stand ready to provide further assistance or clarification as required to do by the Commissioner.

Belongership status

9. Belongership status is set out at section 2 of the Constitution of the Virgin Islands.

Granting Belongership Status

10. The key piece of legislation governing the granting of Belongership status is Part IV of the Immigration and Passport Act 2013 (see pages 7-9 of JSA-4) as amended by the Immigration and Passport Amendment Act, 2019 (see page 10-15 of JSA-4).
11. The general Application Form for Belongership is exhibited at pages 16-18 of JSA-4. I exhibit the accompanying cover sheet which provides information to applicants at page 19 of JSA-4.
12. There is additionally a different Application Form for Belongership for those applying for Fourth Generation Belongership. This is exhibited (along with its cover sheet) at pages 20-22 of JSA-4.
13. For ease of reference I also exhibit the Application Form for Residency (along with its cover sheet) at pages 23-25 of JSA-4.
14. The main ways to obtain Belonger status are by tenure or by marriage (see s.16 of the Immigration and Passport Act). The Application Form used for each of those routes is the same, as exhibited at page 16 of JSA-4. A third way to obtain Belonger status is under the Fourth Generation Belongership application program introduced under the Immigration and Passport (Amendment) Regulations 2019 (see page 26-33 of JSA-4)).
15. In 2004, the Executive Council approved an administrative guideline stating that recommendations for residence status should be made for all those who had lived continuously in the Territory for over 20 years, so long as they had applied before 1 January 2003 (see pages 34-37 of JSA-4). I understand from my colleague Ms Germain Cline that the Immigration Department usually use a benchmark of 20-years for applications by tenure (subject to s.16(4) of the Act).
16. Applications for Belongership (whether by tenure or otherwise) proceed as follows:
 - (a) There are two officers within the Immigration Department who process Belongership applications. Once an application is received, those officers acknowledge it and file it.
 - (b) The Department has a sizeable 'queue' of pending applications and so an application might not be processed straight away. However, once processed (by the officers checking the information provided), the officers contact the individual and call him or her for an interview. If significant time has elapsed since the application was submitted, the Immigration Department will request fresh police check, bank records and photos as appropriate.
 - (c) A member of the Immigration Board attends the interview (along with one or more of the officers) and the interview is minuted.
 - (d) Following the interview, the applicant's file (i.e. his or her application form and notes) are presented to a meeting of the Immigration Board. The Board then votes on the application, and a Cabinet Paper is prepared accordingly.
 - (e) The next step is for the Cabinet Paper to be presented to Cabinet for approval.
 - (f) The regular fee for a Belongership application is US \$500 (plus US \$10 for an identification card) (see Statutory Rates at page 38-42 of JSA-4). It is payable when the application has been granted.

The Fast Track Program

17. In 2019, there was a large backlog of outstanding Residence and Belongership applications. Therefore a Fast Track Program was introduced in June 2019 whereby applicants could pay a fee of \$1,500 (plus \$10 for the identity card) for an expedited application process. During that period, extra staffing resources were allocated to the Immigration Department to administer the applications. The Fast Track

Program also allowed individuals to apply for Residence and Belonger status at the same time, instead of sequentially. The deadline for applications under the Fast Track Program was in August 2019.

Sworn by: Joseph Smith Abbott

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On 26 August 2021

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Joseph Smith Abbott

Before me:



Notary/Commissioner of Oaths

MARK R. HANSEN
Notary Public, State of New York
No. 02HA6322178
Qualified in Ulster County
Commission Expires 03/30/2023

**IN THE MATTER OF THE TERRITORY OF THE VIRGIN
ISLANDS COMMISSION OF INQUIRY 2021**

**AND THE COMMISSION OF INQUIRY ACT (CAP 239) (THE
'ACT')**

FOURTH AFFIDAVIT OF JOSEPH SMITH ABBOTT

**IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS COMMISSION OF INQUIRY 2021
AND THE COMMISSION OF INQUIRY ACT (CAP 239) (THE 'ACT')**

SEVENTH AFFIDAVIT OF JOSEPH SMITH ABBOTT

I, Joseph Smith Abbott, Pusser's Warehouse, 3rd Floor, Road Town, Tortola, VG1110, Virgin Islands, Acting Permanent Secretary, **MAKE OATH** and **SAY** as follows:

Introduction

1. I am the Acting Permanent Secretary of the Ministry of Natural Resources, Labour and Immigration (the "**Ministry**"). I have served in this capacity since 17 May 2021. The statements made in this Affidavit derive from information and documents reviewed during the course of my role as Acting Permanent Secretary, and are true to the best of my knowledge, information and belief.
2. I make this Affidavit on behalf of the Hon. Vincent O. Wheatley (the "**Minister**") as a result of the letter sent to him on 29 July 2021 by Ms Rhea Harrikissoon, Solicitor to the Commission of Inquiry (the "**COI**") entitled 'the Minister for Natural Resources, Labour and Immigration – Request for an Affidavit No.4' (the '**Request**') (see pages 1-6 of Exhibit JSA-7), to which I gave a response in my Fourth Affidavit dated 26 August 2021 and also as a result of the further letter to the Attorney General from Ms Harrikissoon, dated 26 August 2021 (the "**Further Letter**") (see pages 7-9 of Exhibit JSA-7) which asked that I produce a supplementary affidavit addressing all the matters listed in the Request, including providing all missing Cabinet Paper appendices and extracts.
3. The Further Letter also asked that I provide:
 1. All Cabinet Papers from 2019 onwards (except those already provided);
 2. All appendices to Cabinet Papers from 2019 onwards;
 3. All appendices to Cabinet Papers for the following Cabinet Memos:
 - a. 430/2011;
 - b. 139/2011;
 - c. 117/2015;
 - d. 140/2015;
 - e. 135/2016;
 - f. 043/2018.

4. Insofar as we have been able to obtain the material listed in paragraph 3 (above), I understand that a large amount has already been provided, subject to redaction and editing in order to protect confidential information, under cover of a letter dated 1 September 2021. Unless it is referred to in the body of the Affidavit, below, I do not exhibit that material. I am aware that item 3 c. was not included on 1 September. I do refer to item 3 c. below and it is included in the exhibit to this Affidavit. We have also now been able to find the Appendices to Cabinet Papers Memo No. 268/2020 (pages 353-355 of Exhibit JSA-7) and 532/2020 (pages 361-376 of Exhibit JSA-7), which we were not able to provide lastweek. I refer to those Papers below and subject to the same approach with respect to confidential information, I exhibit them with Appendices.
5. At the outset, I should further say that in this Affidavit, where I mention a document, I do not waive any privilege asserted in respect of it unless I do so expressly.
6. I shall refer in this Affidavit to the exhibit marked 'JSA-7', which is a paginated bundle of documents. For convenience, I have re-exhibited any contents of JSA-4, where I refer to them again in this affidavit.
7. To prepare this Affidavit I have worked closely with senior personnel in the Immigration Department.

Belonger Status

8. *Point 1: what is meant by Belongership Status?*
 - 8.1. Belonger Status is a classification used in British Overseas Territories and is given to individuals with particular rights and privileges, generally based on close ties to the Territory in question, for example by ancestry or birth. In the Virgin Islands, the accompanying rights and privileges relate to land ownership, voting rights and a right to remain free from immigration control.
 - 8.2. The definition of Belonger in the Virgin Islands is contained in section 2(2) of the Virgin Islands Constitution Order 2007 ("the Constitution") (at pages 15-16 of Exhibit JSA-7):

"A person belongs to the Virgin Islands if that person-

 - (a) is born in the Virgin Islands and at the time of the birth his or her father or mother is or was-
 - (i) a British overseas territories citizen (or a British Dependent Territories citizen) by virtue of birth, registration or naturalisation in the Virgin Islands or by virtue of descent from a father or mother who was born in the Virgin Islands; or
 - (ii) settled in the Virgin Islands; and for this purpose "settled" means ordinarily resident in the Virgin Islands without being subject under the law in force in the Virgin Islands to any restriction on the period for which he or she may remain, but does not include persons on contract with the Government of the Virgin Islands or any statutory body or Crown corporation;
 - (b) is born in the Virgin Islands of a father or mother who belongs to the Virgin Islands by birth or descent or who, if deceased, would, if alive, so belong to the Virgin Islands;
 - (c) is a child adopted in the Virgin Islands by a person who belongs to the Virgin Islands by birth or descent;
 - (d) is born outside the Virgin Islands of a father or mother who is a British overseas territories citizen by virtue of birth in the Virgin Islands or descent from a father or mother who was born in the Virgin Islands or who belongs to the Virgin Islands by virtue of birth in the Virgin Islands or descent from a father or mother who was born in the Virgin Islands;
 - (e) is a British overseas territories citizen by virtue of registration in the Virgin Islands;

(f) is a person to whom a certificate has been granted under section 16 of the Immigration and Passport Act 1977 of the Virgin Islands (in this subsection referred to as "the Act", and references to the Act or to any section thereof include references to any enactment amending, replacing or re-enacting the same) and has not been revoked under section 17 of the Act; and (without prejudice to the right of any person to apply for the grant of such a certificate under the Act) a British overseas territories citizen by virtue of naturalisation in the Virgin Islands has a right by virtue of this Constitution to apply for the grant of such a certificate;

(g) is the spouse of a person who belongs to the Virgin Islands and has been granted a certificate under section 16 of the Act; or

(h) was immediately before the commencement of this Constitution deemed to belong to the Virgin Islands by virtue of the Virgin Islands (Constitution) Order 1976(a)."

- 8.3. Subsection 3(1) of the Immigration and Passport Act 2013 (the "IPA") (see page 76 of Exhibit JSA-7) provides that for the purposes of the IPA, "a person shall be deemed to belong to the Territory if that person so qualifies under section 2(2) of the Constitution" (see pages 15-16 of Exhibit JSA-7). There is also a definition of Belonger Status given in the IPA, at subsection 16(9), as follows: "For the purposes of this section "belonger" means a person who is deemed to belong to the Territory under section 2(2) of [the Constitution]".
- 8.4. It is clear that Belonger Status is rooted in the Constitution, to which the IPA refers. However, subsections 2(2)(f) and (g) of the Constitution in turn provide for a route to acquisition of Belonger Status by grant of a certificate pursuant to section 16 of the IPA.
- 8.5. Therefore, pursuant to the provisions of the Constitution, read together with the IPA, Belonger status can be acquired in several ways. In summary these are as follows: by birth or adoption (subsections 2(2)(a) to (d) of the Constitution; having acquired British Overseas Territories Citizenship ("BOTC") by registration in the Virgin Islands (subsection 2(2)(e) of the Constitution); by grant pursuant to the provisions of Section 16 of the IPA (subsection 2(2)(f) and (g) of the Constitution); and by being deemed to belong under the now replaced Virgin Islands Constitution Order 1976(a) (subsection 2(2)(h) of the Constitution. However given the focus of the Request, which is upon grants of Belonger Status, I concentrate in this Affidavit upon the acquisition of Belonger Status pursuant to section 16 of the IPA. Belonger Status pursuant to the other subsections of the Constitution is dealt with by the Civil Registry and Passport Office.

Granting Belonger Status

9. Point 2: the current legislation setting out the power to grant Belongership status, and any policy, procedures, practices or guidelines used to determine an application.

- 9.1. The relevant provision of the IPA is section 16 (see pages 82-84 of Exhibit JSA-7).

- (a) The IPA was subsequently amended by the Immigration and Passport (Amendment) Act 2019 (No.5 of 2019), (the "IP(A)A") subsections 2(a) and (b) (see pages 137-138 of Exhibit JSA-7), by which subsections 16(4) and (5) were replaced. However, those amendments were time limited and ceased to apply on 1 February 2020, pursuant to section 6 of the IP(A)A (see page 139 of Exhibit JSA-7) and subsection 2(a) the Immigration and Passport (Amendment) (No.2) Act 2019 (No.6 of 2019) (the "IP(A)(No.2)A") (see page 141 of Exhibit JSA-7). I describe the effect of these amendments at paragraph 33.4 (below) in answering Point 14.
- (b) A new subsection 16(5a) was also added by subsection 2(c) of the IP(A)A (see page 138 of Exhibit JSA-7), but that too has now been replaced with the existing subsection 16(5a), by subsection 2(b) of the IP(A)(No.2)A (see page 141 of Exhibit JSA-7).

- 9.2. I therefore give the text of section 16 of the IPA as it is in force today, ignoring the IP(A)A amendments and taking into account the amendments since 2013, namely the new subsection 16(5a), inserted pursuant to the IP(A)(No.2)A, shown underlined below:

"16 (1) Subject to the provisions of this section, the Cabinet, 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 Act.

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

- (a) the person qualifies under subsection (3);
- (b) there has been an exercise in relation to the person of the power set out in subsection (4);
- (c) the person is the spouse of a believer and meets the requirements set out in subsection (5) and is not disqualified thereunder.

(3) Subject to subsection (4), a person may be granted a certificate referred to in subsection (1) where the person-

- (a) is of good character;
- (b) is not less than 18 years of age;
- (c) has been ordinarily resident in the Territory for a period of not less than 10 years immediately prior to his or her application;
- (d) has held a certificate of residence granted under section 18 for a period of not less than 12 months immediately preceding the date of the application; and
- (e) has, in his or her application, restated his or her intention of making the Territory his or her permanent home and has satisfied the Board that it is his or her intention to do so.

(4) Where in the exceptional circumstances of any case, the Cabinet considers it fit to do so, it may, after consultation with the Board, grant a certificate referred to in subsection (1) to any person who is of good character and who is at the date of making the application for such a certificate ordinarily resident in the Territory and who has been so ordinarily resident for the period of not less than 7 years immediately prior to his or her application.

(5) Where in the exceptional circumstances of any case, the Cabinet considers it fit to do so, it may, in its own discretion and without requiring the submission of an application, grant a certificate referred to in subsection (1) to any person who in its opinion, has made significant and consistent contributions to the economic and social development of the Territory over a period of at least 50 years.

(5a) Where Cabinet considers it fit to do so, it may, in its own discretion grant a certificate referred to in subsection (1) to a person who is a great grandchild of a person who belongs to the Virgin Islands by virtue of section 2(d) of the Constitution, upon application for same in the prescribed manner.

(6) Subject to subsection (7), a spouse of a believer may be granted the certificate referred to in subsection (1) where he or she or she has been ordinarily resident in the Territory with his or her spouse who is a believer, and they have been living together as husband and wife, for at least 5 years, unless within that period of 5 years the spouse of the believer has been sentenced to imprisonment in any country for a criminal offence for a term of one year or more.

(7) Where the spouse who is a believer dies before his or her spouse completes the period of 5 years' residence referred to in subsection (6) and at the time of death the spouses were living together in the Territory as husband and wife for a period of at least 2 ½ years before the death of the believer spouse, the Cabinet may, upon application, grant the surviving spouse the certificate referred to in subsection (1) as if he or she had completed that period of residence."

- 9.3. As to supporting policy, I believe that in 2004 a Committee was set up to review the issue of Belonger Status and the criteria for obtaining such status. Recommendations were made to the Executive Council. I believe that the Executive Council decision encapsulates the policy upon which the Executive Council decided, in the form of the administrative guidelines to which I referred in my Fourth Affidavit at paragraph 15, (see the administrative guideline contained within ExCo Extract No. 367 of 2004 **pages 220-223 of Exhibit JSA-7**).

- (a) The contents of the administrative guidelines are not, in practice, all followed today. For example we do not apply the quota of 25 persons per year referred to at paragraph 1347 (e). This is mentioned at paragraph 1) of Cabinet Paper Memo No.87/2021 (**see page 377 of Exhibit JSA-7**). Applying the quota had led to a large back-log of applications, which was becoming hard to manage.
- (b) I note that the Internal Auditor referred to the quota as if it still applied (see Internal Audit Report 2012 Appendix III paragraph 4 a) **page 176 of Exhibit JSA-7**), but I believe that she was referring to the situation in 2009 to 2012, which was the relevant period for the report. Further, with regard to the current scope of the administrative guidelines, I believe that where, at paragraph 1), Cabinet Paper Memo No.87/2021 refers to guidelines requiring the consideration of particular data (**see page 377 of Exhibit JSA-7**), the author had in mind the various forms and internal marking documents produced by the Immigration Department (the “**Department**”), to which I refer at paragraphs 15.8-15.11 (below), not Extract 367/2004.
- (c) Paragraph 1347 (c) of the administrative guidelines has been and is partially followed, so that after clearing the back-log we have focussed on prioritising the residence or ‘tenure’ based applications of those who had reached the 20th anniversary of their arrival in the Territory.
- (d) The Ministry and the Department have regrettably been unable to locate Appendices 1 and 2 to Extract 367/2004, the recommendations of the Board of Immigration (the “**Board**”), which were apparently approved by the Executive Council and the summary of the report of the ad hoc committee mentioned in Mr Edmund Maduro’s letter.
- (e) However, I would observe that paragraphs 1347 (a) and (b) of the Extract may no longer be relevant because all the applications in question have now been dealt with.
- (f) Further, paragraph 1347 (d) concerns residence, not Belonger Status and paragraph 1347 (f) simply echoes the provisions of the legislation in respect of continuous residence at subsection 16(9)(b) of the IPA (**see page 83 of Exhibit JSA-7**).
- (g) It is regrettable that the Internal Auditor’s first two recommendations that the law be updated, which might include amendments to reflect the practice of the Department in respect of the periods of residence applied as a benchmark, to which I refer at paragraph 10.10 (below), have yet to be implemented (see Internal Audit Report 2012 paragraph p.13 paragraphs 10.1 to 10.2 and p.14 paragraph 10.6 **pages 163-164 of Exhibit JSA-7** and the Internal Audit Follow Up Report 2014 pp 3-4 **pages 187-188 of Exhibit JSA-7**). The immigration law of the Virgin Islands is currently under review. Funding exists for a consultant to assist in this process. We await guidance for the Attorney General’s Chambers as to a possible candidate to act as that consultant.

Criteria

- 10. *Point 3: the criteria in place as at the current date, by which an individual is granted Belongership status.*
 - 10.1. The criteria are provided for in subsections 16(1) to (7) of the IPA (as amended) (**see pages 82-83 of Exhibit JSA-7**) which I have set out above. I shall summarise the principal criteria contained within the section, in respect of each of the separate bases for which it provides.
 - 10.2. On the first basis, pursuant to subsections 16(1) and (3) (not less than 10 years ordinary residence), the requirements are that the person;
 - (a) is of good character (IPA s.16(3) (a));

- (b) is not less than 18 years of age (IPA s.16(3) (b));
 - (c) is ordinarily resident in the Territory for a period not less than 10 years immediately prior to the application (IPA s.16(3) (c));
 - (d) has held a certificate of residence under section 18 of the IPA for a period of not less than 12 months immediately preceding the date of the application (IPA s.16(3) (d)); and
 - (e) has, in the application, restated his or her intention to make the Territory his or her permanent home and has satisfied the Board that it is his or her intention so to do (IPA s.16(3) (e)).
- 10.3. On the further basis, pursuant to subsections 16(1) and (4) (not less than 7 years ordinary residence), the requirements are (IPA s.16(4)):
- (a) the applicant must be of good character;
 - (b) the applicant must be ordinarily resident in the Territory as at the date of making the application and must have been so for a period not less than 7 years immediately prior to the application; and
 - (c) the circumstances must be exceptional.

As I understand it, the last requirement is what justifies the potential grant of Belonger Status after the shorter period of 7 years minimum ordinary residence. In 2019, for a short period of time, subsection 16(4) was amended to allow a broader discretion based on "any other reason" where the applicant had been ordinarily resident for 20 years (see the amendments referred to at paragraph 9.1(a) (above) and paragraph 33.4 (below)). As I have explained, the amendment was explicitly time limited and the subsection has now reverted to its previous form.

- 10.4. On the further exceptional basis, pursuant to subsection 16(5), a person must have made a significant and consistent contributions to the economic and social development of the Territory over a period of at least 50 years. In 2019 subsection 16(5) was amended, again for a short period of time, reducing the period during which such contributions to the Territory might have been made to 20 years and adding a broader alternative criterion of ordinary residence for 20 years (see the amendments referred to at paragraph 9.1(b) (above) and paragraph 33.4 (below)). However, as I have also explained, the amendment was explicitly time limited and the subsection has now reverted to its previous form. I will call this basis 'exceptional Belonger Status'.
- 10.5. On the basis of marriage, the spouse of a Belonger must fulfil the following requirements (IPA s.16(6)):
- (a) The applicant must be ordinarily resident in the Territory with his or her Belonger spouse, the couple having been living together as husband and wife, for at least 5 years, unless within a period of 5 years the spouse of the Belonger has been sentenced to imprisonment in any country for a criminal offence for a term of one year or more.
 - (b) Provision is made in subsection 16(7) for the situation in which the Belonger pre-deceases their spouse before the period of 5 years' residence is completed, where the couple had been living together in the Territory as husband and wife for at least 2 ½ years before the death of the Belonger spouse. In that situation Cabinet, on application, may grant a certificate of Belonger Status to the surviving spouse as if he or she had completed the 5 years' residence requirement.

10.6. A further basis now exists by virtue of new subsection 16(5a) added by the IP(A)(No.2)A, which I have already set out at paragraph 9.2 (above). Pursuant to this basis, a person must be a great grandchild of a person who belongs to the Virgin Islands by virtue of subsection 2(d) of the Constitution (that is the subsection which provides for Belonger Status to be conferred upon birth, in the Virgin Islands, of a father or mother who is a BOTC or Belonger by virtue either of birth in the Virgin Islands or descent from a father or mother born in the Virgin Islands). In essence this subsection allows Cabinet to grant a certificate to someone who is a '4th generation' descendant of a Belonger, in other words someone whose great grand parent, derived Belonger Status by birth in the Virgin Islands or by virtue of their parents' Belonger Status.

10.7. Ordinary residence is defined in subsection 16(9) of the IPA (see pages 83-84 of Exhibit JSA-7), which provides as follows:

"ordinarily resident" means that the applicant was in the Territory at the beginning of the relevant period specified in subsection (3), (4) or (6), ending with the date of the application and that -

(a) the number of days on which he or she was absent from the Territory in that period does not exceed -

- (i) in the case of subsection (3), 900 days;
- (ii) in the case of subsection (4), 630 days; and
- (iii) in the case of subsection (6), 450 days;

(b) the number of days on which he or she was absent from the Territory in the period of 12 months so ending does not exceed 90;

(c) he or she was not at any time in the period of 12 months so ending, subject under the Immigration laws to any restriction on the period for which he or she might remain in the Territory; and

(d) he or she was not, at any time in the relevant period so ending, in the Territory, in breach of the immigration laws."

10.8. Ordinary residence is further defined in subsection 16(10) (see page 84 of Exhibit JSA-7) as follows:

"notwithstanding the definition of "ordinarily resident", an applicant shall be deemed to be ordinarily resident in the Territory where he or she proves to the satisfaction of the Cabinet that he or she has been absent from the Territory on grounds of illness, study, Government service or service in the armed forces of Her Majesty's Government".

10.9. In addition, subsection 16(8) gives guidance as to the factors Cabinet is to consider which addressing applications made pursuant to subsections 16(1) to (4) (see page 82 of Exhibit JSA-7). Again, I refer to the IPA 2013 (see pages 83 of Exhibit JSA-7) to produce the following text of subsection 16(8).

"(8) In deciding whether a certificate should be granted pursuant to subsection (2)(a) or (b) in respect of any applicant, the Cabinet 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 Act 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."

- 10.10. On applications pursuant to subsections 16(1) and (3) and 16 (1) and (4) on the basis of residence (what I understand the Department tends to refer to as 'tenure'), as a matter of practice I am aware that the Department now applies a benchmark of 20 years ordinary residence in the Territory. My Fourth Affidavit at paragraph 15 referred to this benchmark. The benchmark is resonant of the policy guidance in the administrative guidelines in Extract 367/2004, which focussed on the 20th year anniversary of an applicant's arrival.
11. *Point 4: The stages for an application for Belongership status – whether that application is made by an individual or through recommendation – beginning with the application and continuing to its conclusion (where the application is determined and the person is granted Belongership status). If the application process is different where a person is being recommended for Belongership status, then please make this clear.*
- 11.1. It may be helpful if I first summarise the different bases for obtaining Belonger Status pursuant to section 16, which are as follows (I) Belonger by tenure (by which is meant the length of time residing in the Territory) on the ordinary basis, pursuant to subsections 16 (1) and (3) (ordinary residence for not less than 10 years); (II) Belonger by tenure on the exceptional basis pursuant to subsections 16 (1) and (4) (ordinary residence for not less than 7 years), (III) exceptional Belonger Status pursuant to subsection 16(5); (IV) Belonger by marriage pursuant to subsections 16(7) and (8)) and (V) Belonger by 4th generation descent, pursuant to subsection 16(5a).
- 11.2. An application is required, by the provisions of section 16, for a grant of Belonger Status by tenure, on bases (I) and (II), pursuant to subsections 16(1) and (3) and 16(1) and (4). It is also required for an application for a grant by Marriage, on basis (IV), although this is only clearly apparent by reference to the prescribed Form 3, which I describe at paragraph 14.2 (below).
- 11.3. An application is also required for a grant of '4th generation' Belonger Status, (basis (V)) pursuant to subsection 16(5a).
- 11.4. An application is not required in the rare instances where a grant of exceptional Belonger Status is merited, (basis (III) in my summary) pursuant to subsection 16(5).
- 11.5. As I say in answer to Point 4vi) at paragraphs 17.1 to 17.3 (below) there is no process for obtaining Belonger Status by recommendation outside that provided for pursuant to the IPA.

The Application Process

12. *Point 4 i) What are the different categories of Belongership status?*
- 12.1. The different categories of Belonger Status are those provided for in subsection 2(2) of the Constitution. I have described and summarised these at paragraph 8.5 (above).
- 12.2. For the purposes of this Affidavit, given the focus of the Request, as explained at paragraph 8.5 (above), I concentrate on Belonger Status granted by certificate pursuant to section 16 of the IPA.
- 12.3. The bases for a grant of Belonger Status pursuant to section 16 of the IPA have been described and then summarised at paragraphs 10.2 to 10.6 and 11.1 (above).
13. *Point 4 ii) what constitutes a valid application and how much is the fee?*
- 13.1. The application must be made in the standard forms prescribed by regulations made under the IPA, which I describe under Point 4 iii) below.

- 13.2. All questions asked on the form must be answered truthfully and completely and the required supporting documents must be current/valid (if there is an expiry date) in order for the Application to be processed. As indicated on the face of the prescribed forms, they are required to be signed and notarized **(see pages 206 & 210 of Exhibit JSA-7)**.
 - 13.3. By virtue of subsection 45(h) of the IPA, Cabinet may make regulations prescribing the fees to be paid for the issue of a certificate that a person belongs to the Territory **(see pages 99 of Exhibit JSA-7)**.
 - 13.4. The fees are prescribed by Regulation 26(1) and Part I of Schedule 3 to the Immigration and Passport Regulations 2014 (**"the 2014 Regulations"**) **(see pages 108 & 132 of Exhibit JSA-7)**. The fee is fixed at \$500. Schedule 3 refers to a fee of \$10 for a duplicate card however, in practice, the same fees are charged for the original card as well.
 - 13.5. The fee is due/payable upon notice being given that the process has been completed and that the Certificate and Card conferring Belonger Status from the Department can now be issued.
14. *Point 4 iii) The form in which any application is required to be made*
- 14.1. By virtue of subsection 45(f) of the IPA, Cabinet may make regulations prescribing the forms to be used for the purposes of the IPA **(see page 98 of Exhibit JSA-7)**. There are two such forms used for applications for Belonger Status.
 - 14.2. The first form is the Application Form for all applications based on tenure pursuant subsections 16(1) and (3) and 16(1) and (4) and marriage in 16(6) and (7) (bases **(I)**, **(II)**, and **(IV)** in my summary above). The application form in "*Form 3*" is prescribed by subsection 8(1) and Schedule 1 of the 2014 Regulations **(see pages 104 & 115-117 of Exhibit JSA-7 and Form 3 at pages 206-209 of Exhibit JSA-7)**. It can be seen that the questions on the form align with the criteria in subsection 16(8) which Cabinet is required to take into account.
 - (a) In respect of subsection 16(8)(a) (the economic balance as to whether Belonger Status would prejudice others in the trade or profession in which the applicant is engaged) the form asks questions 18 to 21 in relation to the applicant's occupation and/or employment and seeks a financial reference.
 - (b) In respect of subsection 16(8)(b) (close personal connection with the Territory) questions 23 to 25 ask about the applicant's homes, including whether they own a home in the Virgin Islands and any other investments in the Virgin Islands and question 27 asks whether the applicant is or has been a member of any civic or charitable organisation in the Virgin Islands.
 - (c) In respect of subsection 16(8)(c) (character and conduct), question 17 asks for character references and question 26 seeks details of previous convictions.
 - (d) The foregoing questions are also relevant in respect of subsection 16(8)(d) (advantage which may be afforded the Territory by the applicant's residence and association with it).

- 14.3. The second form is the Application Form for 4th generation Belonger Status, pursuant to subsection 16(5a) (basis **(V)** in my summary above). The application form in "Form 4A" is prescribed by section 8A(1) and Schedule 1 of the 2014 Regulations as amended by the Immigration and Passport (Amendment) Regulations 2019 (see pages 143-145 of Exhibit JSA-7 and Form 4A at pages 210-212 of Exhibit JSA-7). The form concentrates on the principal requirement in subsection 16(5a). Thus, questions 10 to 17 seek full details of the parent, grandparent and great grandparent through whom status is sought.
15. Point 4 iv) Does an applicant have to go through an interview process and if so, what criteria is this based on – the processing of the application?
- 15.1. The interview takes place as part of the review of applications by the Board of Immigration ("the Board"). I shall therefore describe the general process as it applies to applications on bases (I), (II) and (IV) (tenure and marriage) and separately point out the differences in respect of 4th generation Belonger Status applications (Basis **(V)** in my summary above).
- 15.2. Once submitted, the application is reviewed by the Department's Status Unit. During this review, the application is checked to ensure that all the required documentation has been included and a thorough review of the applicant's immigration file is made to determine eligibility through lawful residence within the Territory for the required timeframes and any other status required of the applicant under the particular basis for Belonger Status on which he or she relies, in accordance with the legislation. In selecting the order in which applications are reviewed, the Department follows the policy of ensuring that applications of those who have reached the 20th anniversary of an applicant's arrival in the Territory are prioritised (although, as I have pointed out at paragraph 10.10 (above) the Department applies 20 years as a benchmark in tenure cases).
- 15.3. After the form has been submitted, the applicant is notified (by email with a written checklist) of their application status. By the 'status' of the application I mean whether all the necessary supporting documents have been submitted, or whether additional information is needed. In some cases, an applicant may have applied prematurely (in other words before they have reached the 20th year of residence in tenure cases, or the 5th year in marriage cases). They are then informed that the application would be placed on hold until the appropriate period can be demonstrated.
- 15.4. Once all the required information is confirmed to have been received, the application is then placed in a queue for consideration by the Board based on the qualifying year and whether the status to be granted is based upon tenure or marriage. There are two separate queues for tenure and marriage applications respectively.
- 15.5. The next stage is for the application to be considered by the Board. The Board is established pursuant to section 13 of the IPA (see pages 80-81 of Exhibit JSA-7). Pursuant to subsection 14(1) the functions of the Board are "advisory and consultative" and the Board "shall have no executive or administrative functions" (see pages 81 of Exhibit JSA-7). Pursuant to subsection 15(1)(a) and (b) the Board is empowered to make such "enquires as they think expedient" and in respect of "any matters concerning or connected with any of the designated matters" (see page 81 of Exhibit JSA-7). Pursuant to subsection 14(2) the designated matters include "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" (see page 81 of Exhibit JSA-7). It is my understanding that the designated matters include applications for the grant of a certificate of Belonger Status pursuant to section 16.
- 15.6. The order in which applicants are selected for interview is based on the date of the application and the qualifying year.

- 15.7. Board Members are informed of the need to interview applicants. The interview panel is chosen from the members of the Board based on availability to participate in interviews on the date the Department has identified. The applicants are then provided with the date and time of their interview. The Cultural Test always takes place on the same date so that applicants only have to attend on the one occasion. In the case of an application for Belonger status by marriage, the applicant and their spouse are interviewed separately.
- 15.8. Since 2010 the Board has used a point system which is set out in a form for the interview panel, accompanied with explanatory notes, called the Belonger Status & Residence Assessment Form ("**the Point System Form**") (see **pages 213-218 of Exhibit JSA-7**). As with the application forms, it is evident that the topics addressed on the form align with the criteria in subsection 16(8), which Cabinet is required to take into account.
- (a) In respect of subsection 16(8)(a) (the economic balance as to whether Belonger Status would prejudice others in the trade or profession in which the applicant is engaged), topic 1 is 'Employment Status and points out of 20 are given. Maximum points are available to those who can demonstrate continuous employment and tax and social security contributions (see **page 213 of Exhibit JSA-7**). This is further explained in Cabinet Paper Memo 140/2015 at paragraph 2 (see **pages 232-233 of Exhibit JSA-7**). An applicant who has failed to secure employment without a reasonable excuse is not attributed any points. Topic 4 is entitled 'Funds and Salary', carries a maximum of 30 points and examines the evidence of the applicant's means of support (see **pages 215 of Exhibit JSA-7**). Sound financial standing gains an applicant points, as explained in Cabinet Paper Memo 140/2015 at paragraph 2 (see **pages 232-233 of Exhibit JSA-7**).
 - (b) In respect of subsection 16(8)(b) (close personal connection with the Territory) topic 3, carrying a maximum of 20 points is entitled 'Financial Assessment' and includes points a. to c., which direct attention to the applicant's investments in property and companies in the Virgin Islands and savings made locally (see **page 214 of Exhibit JSA-7**). Topic 5, which carries a maximum of 40 points, is entitled 'Contributions to the Local Community' and seeks evidence of "*An applicant's ability to settle and integrate successfully into the Virgin Islands*" by evidence of "*adaptability, motivation, involvement in the community and initiative*" with points available on the basis of the number of community programmes the applicant has been involved in and for how long (see **page 216 of Exhibit JSA-7**). Points a. to i. at topic 5 give examples of the type of programme which may be considered, such as youth programmes, participation in counselling or drug programmes or in a church or other local society (see in particular at 5 b., c. and h. **page 216 of Exhibit JSA-7**). Under topic 6, points are deductible for evidence of failure or inability to assimilate into the BVI community (see **page 216 of Exhibit JSA-7**). Topic 7 concerns the Cultural Test which I describe further below and carries a maximum of 20 points (see **page 216 of Exhibit JSA-7**).
 - (c) In respect of subsection 16(8)(c) (character and conduct), under topic 9, points are deductible where an applicant is found to have offences recorded on his or her Police Record in the Virgin Islands, based on a Schedule of deductible points (see **pages 217-218 of Exhibit JSA-7**) as explained in Cabinet Paper Memo 140/2015 at paragraph 2 (see **pages 232-233 of Exhibit JSA-7**).

- (d) The foregoing questions are also relevant in respect of subsection 16(8)(d) (advantage which may be afforded the Territory by the applicant's continued residence and association with it). In addition topic 2 entitled 'Knowledge/Experience', carrying a maximum of 20 points, seeks details of the experience and qualifications of the applicant, with points available for particular skills and qualifications (see page 214 of Exhibit JSA-7) as mentioned in Cabinet Paper Memo 140/2015 at paragraph 2 (see pages 232-233 of Exhibit JSA-7). Further, topic 8 entitled 'General' awards points out of 20, with higher points available to an applicant coming from a country of origin with low representation among those persons holding work permits in the Territory at the time the application is considered.
- (e) There is a total of 150 points available. The current practice is that a score of 75 points, in other words 50%, is desirable for 'tenure' applications. I note the Internal Auditor's evidence that an applicant has to achieve 50% marks on all areas applicable to that applicant in order that the Board make a positive recommendation to Cabinet (see Transcript Day 22 p.35/17 to p.36/1 and Internal Audit Report 2012 Appendix III paragraph 7 page 177 of Exhibit JSA-7). However, the Board is not now so confined in the recommendations it might make. I note that low scores do sometimes appear in respect of Applicants recommended for Belonger Status. The description of the point system at paragraph 2. of Cabinet Paper Memo 140/2015 shows that that at that time it was the practice to adjust the total score to reflect certain factors such as the fact that the applicant was retired or a full time student, by deducting the number of points on an inapplicable topic, such as 'Employment Status' (see pages 232-233 of Exhibit JSA-7). This system is also referred to at p.5 paragraph 9.2.1 of the Internal Audit Report 2012 (see page 155 of Exhibit JSA-7). It is not the practice to do this now. However, the Board do consider low scores carefully. If a low score is based on lack of employment or low income, for example due to being a full time student, the Board may find that a positive recommendation can still be made, as the individual's particular circumstances provide such relevant mitigation. The detailed minutes of Board discussions would show deliberations on such cases.
- 15.9. All interviews take place with up to two Board Members and an officer of the Department's Status Unit to assist in administering the Cultural Test and taking notes of the interview. The panellists are required by the Department to fill in the Point System Form so that the fairness and impartiality of the assessment of each application is demonstrable. The Officer from the Status Unit records the recommendation of the interviewing panel and sends forward the results and recommendation to the Board.
- 15.10. The Cultural Test (of which there are several versions, to help prevent cheating), consists of ten questions related to Virgin Islands culture and Government. It is given to the applicant, for completion within 10 minutes. However, the Department is prepared to be flexible depending on any disability or lack of aptitude suffered by any particular applicant. It should be noted that a low score on this test does not automatically prevent a person from being awarded Belonger Status, but it is a valuable indication to the Board and the Department providing insight into the Applicant's knowledge of their surrounding community.
- 15.11. The Point System Form (see pages 213-218 of Exhibit JSA-7) is used to capture the applicant's responses in the interview.
- 15.12. It can therefore be seen that the Department has gone to considerable lengths to create an evaluation process that is fair and equitable, designed to improve decision making and promote transparency in the process of reviewing, verifying and validating applications for Belonger Status.

- 15.13. The Status Unit also proceeds to create a profile for that application. The profile is a shortened version of the application form and a summary of the documentation provided, presenting the pertinent details for the Board Members' review. As I describe below, this profile also forms part of the profiles which are later prepared and appended to any resulting Cabinet Paper. The profile contains information referable to the criteria in subsection 16(8), such Employment History, Financial References, Character References, Police Record, Annual Maximum Period of Absence, Investments in and outside of the Territory, Trade Licenses, Territorial Contributions, Other Information, and Cultural Knowledge.
- 15.14. After the interview and Cultural Test have been completed, the application is placed on the Board's agenda for decision at the next feasible meeting. In the meeting, the Board reviews and votes on the application and recommendation to be made, referring to the scoring process and the score sheet which I have already described. The voting results are then logged into the Minutes of that meeting, for inclusion in the submission to Cabinet. During the Board's meeting, the review of the applicants' information is conducted via the profile, which will by now also contain the scores from the interview panel and Cultural Test. However, full applicant files are on hand in the event that the Board wishes to refer to them during the meeting.
- 15.15. Following the Board meeting, all recommendations are compiled and used to prepare a Cabinet Paper for submission to Cabinet along with the profiles as appendices. Once the Paper is uploaded to ExCo Track, the prescribed process is followed with the Financial Secretary and the Attorney General reviewing the Paper and providing comments prior to the Paper being added to Cabinet's agenda for consideration. The Cabinet Paper includes an Extract from the Minutes of the Board. As is explained in paragraphs 2. to 6. of Cabinet Paper Memo 140/2015, the current practice is to include in the Paper all recommendations of the Board, whether positive or negative (**see pages 232-233 of Exhibit JSA-7**). I note the Internal Auditor's evidence that the Cabinet Paper is prepared by the Premier's Office (see Transcript Day 22 p.36/1-8 and see Internal Audit Report 2012 Appendix III paragraph 9 **pages 177 of Exhibit JSA-7**). However, this is not now the case and as I understand it, has not been the case since 2019. It will be seen that the Cabinet Papers I exhibit for the years 2019 to 2021 have been produced by the Ministry.
- 15.16. Cabinet reviews the recommendations of the Board and a final decision is made, which is subsequently shared with the Ministry by way of an Extract.
- 15.17. Applicants applying for 4th generation Belonger Status (basis (V) in my summary above) are not required to undergo the interview or take a Cultural Test. In their case, status is determined by proof of lineage. Furthermore, applications for Belonger Status pursuant to subsection 16(5a) do not require the Board's recommendation and therefore are submitted directly to Cabinet once the birth certificates which have been presented have been verified. The Department scrutinises the documentation and then places the profiles in Appendices to a Cabinet Paper, although the full applications always remain available for Cabinet to review as necessary. I exhibit a draft Cabinet Paper dated 20 May 2021 as a recent example in respect of 4th generation applications (**see pages 407-413 of Exhibit JSA-7**). I note that there appears to be an error in the draft Paper at paragraph 2), where it suggests that 4th generation applicants have to submit the same documentation as other applicants. As can be seen from the different information required by Forms 3 and 4A, which are set out at paragraphs 14.1-14.3 (above) this is not the case. The error will be corrected. The profiles concentrate on the details of the relevant forbears of the applicant.
- 15.18. As I have noted above, grant of exceptional Belonger Status (basis (III) in my summary above) does not involve an application.

16. *Point 4 v) Who the application should be made to*

- 16.1. Regulation 8(1) of the 2014 Regulations (**see pages 104 of Exhibit JSA-7**) provides that every application for a certificate that a person belongs to the Virgin Islands shall be made to the Chief Immigration Officer who heads the Department.
17. *Point 4 vi) Can someone be recommended for Belongership status rather than making an application themselves and if so, what are the criteria and who recommends them?*
- 17.1. It is not possible for an applicant to obtain Belonger Status other than by the procedure I have described herein.
- 17.2. As I have already pointed out in answering Point 4 at paragraphs 11.2-11.4 (above) an application is required for all save one of the bases for granting Belonger Status pursuant to section 16.
- 17.3. As I have also pointed out, pursuant to section 16(5) of the IPA, Cabinet has discretion, of its own volition, to grant exceptional Belonger Status without any application having been made. However there is no 'recommendation' process in this regard and, as I have previously stated, the grant of exceptional Belonger Status is extremely rare. That is unsurprising, given the requirement of a 50 year record of commitment to the Territory.
- 17.4. I am aware of the contents of the Internal Auditor's Report of 2012 and the evidence that she has given in respect of the year 2011, including to the effect that 224 people received Belonger Status from Cabinet, without passing through the process I have described (Transcript Day 22 p.37, 8-20 p.38/1-10 and p.42/18 and Audit Report 2012 p.2 paragraph 1.1.5 and pp 8-9 paragraphs 9.11 to 9.12 **pages 152 & 158-159 of Exhibit JSA-7**), including 32 people who had applications pending, had not been recommended by the Board and still received Belonger Status, another person who received Belonger Status after they had already been awarded it and 190 persons who received Belonger Status without having applied at all and that the 190 persons were added at Cabinet level based on personal representations by individual members of Cabinet (Transcript Day 22 p.43/11-16). We are aware of the need to ensure that such situations do not recur and we make every effort to see that they do not.
18. *Point 4 vii) What information is required in support of the application?*
- 18.1. The information required differs depending upon the type of application.
- 18.2. If the application is one in respect of a Belonger Status by tenure and marriage (bases (I), (II) and (IV) in my summary above), the information required is as follows, as set out in full on Form 3:
- (a) Two (2) passport size photographs.
 - (b) One (1) **original local** police certificate.
 - (c) **Original or certified copy** of your Birth Certificate.
 - (d) **Original or certified copy** of Marriage Certificate (*if applicable*).
 - (e) Copy of annual Entry Permit Stamp (*if applying by marriage ONLY*).
 - (f) Evidence that your spouse is a BVIlander/Belonger (i.e. **copy** of profile page and Governor's Seal in passport; **copy** of Virgin Islands Belonger's Card; or **copy** of Naturalization Certificate (granted before 15th June 2007), and copy of this document must be accompanied by a copy of picture ID.
 - (g) **Copy** of your Certificate of Residence or Residence identification card (*if applicable*).
 - (h) A job letter as proof that you can support yourself and your dependents.
 - (i) Two (2) letters of reference from **BVIlanders or Belongers**, aged 25 or older who have known you for at least five (5) years and are not Members of the House of Assembly. **Proof that referees are BVIlanders or Belongers MUST be attached**, (i.e. copy of ID page of passport along with copy of Governor's Seal in passport, or copy of BVI birth certificate, or copy of Belonger's Card).

- (j) A letter of reference from **local bank** stating the **current balance** on your account as well as the **average balance for the past six (6) months**.
 - (k) **Certified copies** of your academic/professional qualification(s) *(if applicable)*.
 - (l) **Copy** of Trade Licence *(if applicable)*.
 - (m) **Copy** of Non-Belongers Land Holding Licence and Land Transfer *(if applicable)*.
- 18.3. If the application is one in respect of 4th Generation Belonger Status by direct descent (basis **(V)** in my summary above), the information required is as follows:
- (a) Two (2) current passport size photographs.
 - (b) One original local or international police certificate *(not issued more than 6 months ago)*.
 - (c) Original or certified copy of your Birth Certificate.
 - (d) Original or certified copy of your Adoption Certificate *(if applicable)*.
 - (e) Original or certified copy of Parent's Birth Certificate *(which status is being received through)*.
 - (f) Original or certified copy of Grandparent's Birth Certificate *(which status is being received through)*.
 - (g) Original or certified copy of Great-grandparent's Birth Certificate *(which status is being received through)*.
19. *Point 4 viii) Who makes the final decision?*
- 19.1. The final decision is made by the Cabinet of the Virgin Islands.
20. *Point 4 ix) Any timeframes within which an application should be made*
- 20.1. As I have described at paragraphs 10.2 and 10.3 (above) with regard to applications for Belonger Status by tenure (bases **(I)** and **(II)** in my summary above, pursuant to subsections 16(1) and (3) or 16(1) and (4)), a person may apply for Belonger Status by tenure if they have obtained an official Certificate of Residency and they have been resident in the Territory for at least 10 or in exceptional cases, 7 years, although as I have described at paragraph 10.10 (above), the Department's practice is to apply a benchmark requirement of a minimum of 20 years.
- 20.2. As I have described at paragraph 10.5 (above) with regard to applications for Belonger Status by marriage (basis **(IV)** in my summary above, pursuant to subsection 16(6) and (7)) a person may apply for Belonger Status by marriage if they have been married to a BVIlander or Belonger for at least five (5) years and they have resided together in the Territory as husband and wife.
21. *Point 4 x) If an application is rejected, is the applicant informed of this decision and of the reasons and if not, why not?*
- 21.1. The applicant is notified by telephone and letter of the outcome of their application (although currently, under the Covid-19 restrictions email is being used). The applicant receives a letter indicating that they have not complied with the relevant provision of the Statute, citing the particular subsection under which their application was made. An applicant who does not understand why their application has been rejected can seek further clarification and the Department will supply that.
- 21.2. If an application is successful, the applicant is advised to attend the Department to make payment of the fee referred to a paragraph 13.4 (above) for the Certificate and Card of Belonger Status, signed by the Chief Immigration Officer. Once the applicant has received his or her Certificate and Card, their application is filed within the Department. This ends the process.

22. *Point 5 in relation to the preceding question, please explain whether there are any published policies or guidance which expressly set out the process to be followed in making an application and please provide the same*
- 22.1. Instructions are to be found on the Department of Immigration's webpage of Government's website, which also contains links to Form 3 (see pages 199 to 205 of Exhibit JSA-7). However, the application form for 4th Generation Belonger Status is not available on the website. We are aware that the website needs updating in this regard and will be taking steps to have that done as soon as possible.
- 22.2. We do encourage applicants to visit the Department or otherwise contact the Department. We are then able to provide detailed information and guidance on the process.
23. *Point 6: Can you confirm if in practice, the criteria are mandatory or does Cabinet or the Immigration Board have any discretion whether to award Belonger Status' and if so, in what circumstances would it be appropriate to use their discretion?*
- 23.1. The legislation does not provide for an automatic right to Belonger Status on fulfilment of these criteria. They are the criteria which have to be fulfilled in order for an application to proceed as far as the Board and for the Board to then make recommendations for consideration by Cabinet. The final decision and discretion whether or not grant the status of Belonger resides with Cabinet (see subsections 16(1) to (7) of the IPA which are explicitly expressed in terms that where the criteria are fulfilled the applicant "may" be granted a certificate).
- 23.2. Cabinet will be guided in the exercise of their discretion by the provisions of section 16, any advice from the Attorney General and the recommendations of the Board. It is appropriate for Cabinet to exercise its discretion when the requirements of the legislation are fulfilled
- 23.3. As I have already described, subsection 16(5) of the IPA confers a discretion upon Cabinet to grant what I have referred to as exceptional Belonger Status in the rare circumstances where an individual qualifies.
- (a) I am aware of only one grant of exceptional Belonger Status pursuant to subsection 16(5) having been made since 2013. It was granted to [REDACTED] for [REDACTED]
- (b) I have seen Cabinet Paper Memo No. 117/2015 referring to a grant of what is called 'honorary believer status' to [REDACTED] (see pages 226-230 of Exhibit JSA-7). However, as is apparent from the advice of Crown Counsel at Appendix B, 'honorary believer status' carries with it no legal status at all, let alone that of Belonger under the Constitution. It is no more than an honorific term and, for that reason Crown Counsel was able to say that it was a matter which fell "solely within the discretion of Cabinet".

The Role of the Board

24. *sPoint 7: What is the role of the Immigration Board in relation to applications for Belongership status and who is on this Board?*
- 24.1. The Board is responsible for the review of applications and making recommendations to Cabinet about them, as described above.
- 24.2. The current Board consists of the following Members:

Mr. Glen Harrigan

- Chairman

Ms. Rosalia Gardener	- Member
Ms. Roxane Sylvester	- Member
Mrs. Vareen Vanterpool-Nibbs	- Member
Mr. Shane Baptiste	- Member
Ms. Kimberly Seagojo	- Member
Mrs. Rexella Hodge	- Member
Mr. Coy Levons	- Member
Chief Immigration Officer	- Ex-Officio Member

- 24.3. It is evident that the Board's role makes a significant contribution to the fairness of the Belonger Status application process.

The Role of Cabinet

25. *Point 8: What is the role of Cabinet in relation to applications for Belongership status?*

- 25.1. As I have previously pointed out, Cabinet makes the final decision on the approval or denial of Belonger Status, as prescribed in section 16(1) of the IPA.
- 25.2. As I have already described above, the Board only makes recommendations on the outcome of an application and does not make the final decision on the outcome of any application.
- 25.3. Cabinet may receive further advice, for example in Cabinet Paper Memo. No 87/2021 (22 February 2021) at paragraphs 10) to 15) (**see page 379-380 of Exhibit JSA-7**), the Attorney General referred Cabinet to the criteria in subsection 16(8) of the IPA (**see page 3 of Exhibit JSA-7**).
- 25.4. Further, Cabinet will balance any loss of revenue in approving applications with the potential economic benefits of more closely integrating the applicants in the community (as noted above in respect of 4th Generation applications and see, for example paragraph 5) of Cabinet Paper Memo No.87/2021 (22 February 2021) (**see page 378 of Exhibit JSA-7**). As was also noted in Cabinet Paper Memo No.87/2021 at paragraph 5), any loss of revenue was minimal as the applicants in question already had Work Permit exemptions and residence status.
- 25.5. It can be seen from the following Cabinet Papers from recent years which I exhibit, in relation to applications upon which the Board have made recommendations, Cabinet usually follows those recommendations:
- (a) In respect of applications on the basis of tenure or marriage (bases (I), (II) and (IV) in my summary), see Cabinet Paper Memo No. 87/2021 (22 February 2021), the decision sought and the Expedited Extract containing Cabinet's decision, approving 6 subsection 16(6) applications, and 21 subsection 16(3) applications (**see pages 380-383 and 387-390 of Exhibit JSA-7**), Cabinet Paper Memo No.301/2021 (19 July 2021), see the decision sought and the Expedited Extract containing Cabinet's decision, approving 25 subsection 16(6) applications, and 36 subsection 16(3) applications (**see pages 394-98 & 402-406 of Exhibit JSA-7**) and Cabinet Paper Memo No.268/2020 (15 July 2020), the decision sought and the Expedited Extract containing Cabinet's decision, approving 48 subsection 16(6) applications, and 3 subsection 16(3) applications (**see pages 347-351 and 356-360 of Exhibit JSA-7**).
 - (b) In respect of 4th generation applications (basis (V) in my summary), see Cabinet Paper Memo No.532/2020 (10 December 2020), see the decision sought and the Expedited Extract containing Cabinet's decision, approving 84 applications (**see pages 363-368 and 371-376 of Exhibit JSA-7**).

- 25.6. In Cabinet Paper Memo No.244/2019 (29 July 2019), almost all of the recommendations were approved: see the decision sought and the Expedited Extract containing Cabinet's decision, approving 42 subsection 16(6) applications, 1 subsection 16(7) application, 1 subsection 16(4) application, a further 2 subsection 16(6) applications and 160 subsection 16(3) applications **(pages 281-293 and 300-306 of Exhibit JSA-7)**. Cabinet simply moved an applicant who appeared at e) 3. in the third list of names in the Decision Sought, to the first list of names in its decision. In respect of Cabinet Paper Memo No. 043/2018 (30 October 2017), Cabinet approved almost all of the recommendations of the Board save deferring one recommendation not to grant a certificate: see paragraph (c) of the decision **(pages 260-261 and 268-270 of Exhibit JSA-7)**. It appears that, by a decision taken on 28 March 2018, Cabinet later concluded that the deferred application should be granted **(see page 276 of Exhibit JSA-7)**. In respect of Cabinet Paper Memo No.135/2016 it appears that Cabinet approved two batches of 6 and 3 applications respectively and decided to look more closely at one other application upon which the Board had recommended that the application be refused, by a Decision dated 1 June 2016 **(see pages 243-244 and 255-256 of Exhibit JSA-7)**.
- 25.7. The Cabinet Papers referred to at paragraph 25.5(a) (above) all have appendices with the profiles of each applicant, showing a summary of the information referable to the topics described at paragraph 15.8 (above) addressed on the 'Point System' Score Sheet, together with the scores given by the Board, although those are not exhibited in order to preserve the confidentiality of the sensitive information which they contain.
- 25.8. There are earlier examples of instances where Cabinet do not appear to have followed the recommendations they were given. For example, an extract from minutes of 2011 under Memo No. 139/2011 seems to show Cabinet adding 30 names to the list for Belonger Status, apparently having noted advice received from the Attorney General **(see pages 224-225 of Exhibit JSA-7)**. Further, Expedited Extract Memo No.140/2015 shows Cabinet approving 5 applications which the Board had recommended should be refused because of scores below "the minimum attainable points" **(see pages 232 and 240-241 of Exhibit JSA-7)**.
- 25.9. I am aware of the Internal Auditor's seventh recommendation in her 2012 Report, that full reasons be recorded for a Board or Cabinet decision to deny Belonger Status, in particular where the Board had made a recommendation in favour of a grant and Cabinet rejects that recommendation (see Internal Audit Report 2012 p.14 paragraph 10.7 **page 164 of Exhibit JSA-7** and the Internal Audit Follow Up Report 2014 p.10 **page 194 of Exhibit JSA-7**)) and that it has not been fully implemented. The Board does record its reasons, as I have described above. I agree with the recommendation with regard to Cabinet, especially if Cabinet does not follow the recommendations of the Board.
26. *Point 9: In oral evidence, Dr Orlando Smith explained that on some occasions, Cabinet members would suggest that an applicant should be granted Belongership status but that the ultimate decision was for the Immigration Board. In the last 5 years, can you confirm the total number who were granted Belongership status based on a recommendation by Cabinet?*
- 26.1. With great respect to the former Premier, Dr Smith, the position is as set out above in this Affidavit. It is for the Board to make recommendations to Cabinet and not vice versa.
- 26.2. Cabinet makes the final decision on the approval or denial of Belonger Status, as prescribed by section 16 of the IPA. The Board only makes recommendations.
- 26.3. It follows, therefore, that over the last 5 years, no persons have received Belonger Status based on a "recommendation" by Cabinet. Persons have received Belonger Status pursuant to decisions of Cabinet.

27. *Point 10: Within the last 5 years, can you confirm the total number of applicants that were granted Belongship status and whether this was in accordance with the law?*

27.1. I have made enquiries with the relevant officers. I exhibit a table showing the number of persons granted Belonger Status between 2017 and the present, organised by the bases within subsection 16 (marriage, basis (IV) in my summary, tenure bases (I) and (II) in my summary and 4th generation, basis (V) in my summary). (see page 219 of Exhibit JSA-7).

27.2. From the information I have been given set out in the table, I can say that over the last 5 years, a total of 1,806 persons received Belonger Status by Cabinet approval of the Board's recommendation between 2017 and 2021.

27.3. As far as I am aware, these grants were made in accordance with the law.

Records

28. *Point 11: Is there an official record of the number of applications and if so, who is responsible for maintaining this record?*

28.1. There is an official record of the number of applications.

28.2. The Department is responsible for maintaining the records in relation to Belonger Status, pursuant to a duty imposed by subsection 15(1)(b) of the IPA with regard to statistical data, records and reports "in respect of matters connected with the designated matters" (see page 81 of Exhibit JSA-7). As I have already explained at paragraph 15.5 above, it is my understanding that applications for Belonger Status fall within the definition of designated matters for these purposes.

28.3. I should point out that I am aware that the record is incomplete because of a combination of circumstances to which I believe the Commissioner's attention has already been drawn, namely a combination of fire, flood and human error.

Legislative Amendments

29. *Point 12: Section 16(3)(c) of the Immigration and Passport Amendment Act 2000 required that a person be ordinarily resident in the Territory for a period of not less than 10 years immediately prior to the application. An Executive Council Minute Extract 367/2004 dated 20 July 2006 invited the Attorney General to draft amendments to this section to increase the 10 years criteria to 25 years. However in the Internal Auditor's 2012 Report, she found that there was no record of the amendment. It is understood that the ordinarily resident test is now 20 years.*

29.1. As I have described at paragraph 10.10 (above) the Department does apply a benchmark of 20 years to applications in respect of tenure (bases (I) and (II) in my summary above. However, the ordinary residence test in the Legislation remains unamended, as I have described at paragraphs 10.7 to 10.8 (above).

30. *Point 12 i) Were there any amendments in 2006?*

30.1. I am not aware of any amendments made to the relevant legislation in 2006.

30.2. In particular, no amendment was made to my knowledge to reflect the recommended 25 years ordinary residence period recommended in the administrative guidelines at paragraph 1348 (d) (see page 222 of Exhibit JSA-7).

31. *Points 12 ii) and 12 iii) What is the current test for ordinarily resident? Is the current ordinarily resident test mandatory?*

- 31.1. The ordinarily resident definition is provided for in the legislation in subsection 16(9) of the IPA, and set out at paragraph 10.7 (above). It has not been amended.
- 31.2. Subsections 16(3), (4) and (6), to which subsection 16(9) refers back, provide for a period of ordinary residence of not less than 10, 7 or 5 years. The Department is therefore bound to apply that definition as a minimum requirement. In addition, in respect of tenure applications, it applies the benchmark of 20 years I have referred to above.
- 31.3. As to the application of the mitigating circumstances for absence from the Territory set out in section 16(10) the Department takes a flexible approach considering each situation on case by case basis. We look carefully at claims that absence has been for example on the grounds of illness or study are require evidence to establish that the grounds have been made out. That might take the form of letters from educational or medical institutions.
32. *Point 13 i) to 13 iii) At present, can you confirm whether the law and policy is now consistent in establishing the criteria for Belongership status? If so, can you outline the steps taken to ensure this is now consistent? If not, can you explain how this works in practice if both the law and policy are inconsistent?*
- 32.1. The legislation may be said to be inconsistent with policy to the extent that the Executive Council administrative guidelines under Extract 367 of 2004 at paragraph 1348 (see pages 220-223 of Exhibit JSA-7) included an invitation to the Attorney General to draft amendments to the then version of the IPA as follows:
- (a) To ensure Belonger Status for children born outside the Territory to a Belonger parent whose entitlement to Belonger Status 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.
- 32.2. I do not believe that any amendments have been drafted in respect of (a)-(d), save insofar as the 4th generation amendment described above addressed the aim behind point (a).
- 32.3. As far as I am aware no further steps have yet been taken to implement these proposed amendments.
- 32.4. I recognise that the application of the Department's benchmark to tenure applications may also be said to be inconsistent with the law. In applying that benchmark I understand that we take account of the fact that the legislation prescribes a qualifying period of not less than 10 or 7 years (subsections 16(3) and 16(4) IPA), but that the Department has also borne in mind the policy reflected in the administrative guideline in Extract 367/2004 with its focus on the 20th anniversary of the applicant's arrival in the Territory.
33. *Point 14 Can you outline any amendments to date to the law on Belongership since the Immigration and Passport Amendment Act 2000 (including but not limited to the ordinarily resident test)?*
- 33.1. The ordinary residence test pursuant to subsection 16(9), as set out at paragraph 10.7 (above), has not been amended.

- 33.2. By section 2 of the Immigration and Passport (Amendment) Act 2003, (No.8 2003) (**see page 66 of Exhibit JSA-7**) a predecessor to what is now subsection 16(5) was inserted as subsection 16(4A) as follows:

"(4A) Where in the exceptional circumstances of any case, the Governor in Council considers it fit to do so, it may, in its own discretion and without requiring the submission of an application, grant a certificate referred to in subsection (1) to any person who, in its opinion, has made significant and consistent contributions to the economic and social development of the Territory over a period of at least fifty years".

- 33.3. It can be seen from the IPA 2013 (**see page 67 of Exhibit JSA-7**) that only one further amendment was made between 2003 and 2014, namely that in Act No. 11 of 2006 which made amendments to sections 20 to 23. Those do not concern Belonger Status. Accordingly, it is apparent that the ordering of the subsections as it appears in section 16 of the IPA 2013, where subsection 16(4a) has become subsection 16(5), the reference to "the Governor in Council" has been changed to Cabinet, the erroneous reference to subsection (2) has been changed to refer to subsection (1) and the subsequent subsections renumbered 16(6) to (9), was a product of the 2013 revision. I have set out the current section 16 of the IPA at paragraph 9.2 (above).

- 33.4. At paragraph 9.1(a) (above) I have already referred to the temporary amendments made to subsections 16(4) and 16(5) in 2019 by section 2 of the IP(A)A 2019 (**see pages 137-138 of Exhibit JSA-7**). The effect of those amendments, which have now lapsed can be shown as follows:

(4) Where in the exceptional circumstances of any case ~~or for any other reason~~, the Cabinet considers it fit to do so, it may, ~~in its own discretion after consultation with the Board~~, grant a certificate referred to in subsection (1) to any person who ~~applies for the same in the prescribed manner and who~~

~~(a) is of good character; and who~~

~~(b) is at the date of making the application for such a certificate ordinarily resident in the Territory and~~

~~(c) who has been so ordinarily resident for the period of not less than 7 years immediately prior to his or her application.~~

(5) Where in the exceptional circumstances of any case, the Cabinet considers it fit to do so, it may, in its own discretion ~~and without requiring the submission of an application~~, grant a certificate referred to in subsection (1) to any person who ~~applies for same in the prescribed manner and who~~, in its opinion,

~~(a) has made significant and consistent contributions to the economic and social development of the Territory over a period of at least 50 years; or~~

~~(b) has been ordinarily resident in the Territory,~~

~~for a period of at least 20 years.~~

- 33.5. In essence this allowed applications in respect of those who had been ordinarily resident in the Virgin Islands to be approved without the consultation of the Board and thus 'fast tracked'. This is explained in Cabinet Paper Memo 532/2020 at paragraph 1) (**see page 361 of Exhibit JSA-7**).

- 33.6. The IP(A)A 2019 also inserted a new subsection 16(5a) (**see page 138 of Exhibit JSA-7**):

(5a) Where Cabinet considers it fit to do so, it may, in its own discretion grant a certificate referred to in subsection (1) to a person who is born outside of the Virgin Islands of a father or mother who belongs to the Virgin Islands by virtue of section 2(d) of the Constitution, upon application for same in the prescribed manner.

As drafted in this way, the requirements were that a person be:

- (a) born outside of the Virgin Islands;

- (b) of a father or mother who belongs to the Virgin Islands by virtue of subsection 2(d) of the Constitution (that is the subsection which provide for Belonger Status to be conferred upon birth in the Virgin Islands, of a father or mother who is a BOTC or Belonger by virtue either of birth in the Virgin Islands or descent from a father or mother born in the Virgin Islands).

This subsection allowed Cabinet to grant a certificate to someone who is a '2nd Generation' descendant of a Belonger, in other words someone whose parent derived Belonger Status by birth or from their parent's Belonger Status. However it had been intended to deal with 4th generation Belonger Status and it was for this reason that it was replaced, pursuant to the IP(A)(No.2)A, by the new subsection 16(5a), which is now in force and is set out above at paragraph 9.2 (above). This is explained at paragraph 1) of Cabinet Paper Memo No.532/2020 (see page 361 of Exhibit JSA-7).

33.7. In respect of the amendments noted above, I would add the following:

- (a) With regard to the amendments to subsections 16(4) and 16(5). the Government appears to have intended to create a special 'Fast Track' process aimed at expatriate workers and those residing in the Territory for 20 years or more: see Cabinet Paper Memo No.289/2019 (12 September 2019) paragraph 1) (see page 307 of Exhibit JSA-7). However, the process still required an application, completion of the Cultural Test and the submission of the documentation which would ordinarily have been required on Form 3, as explained in paragraph 2) of Cabinet Memo No.289/2019 (12 September 2019) (see page 307 of Exhibit JSA-7). There was also an increased fee of \$810 for Belonger only applications (\$1510 for a combined Belonger and Residence application under the Fast Track process), as noted at paragraph 3) of Cabinet Paper Memo No.289/2019 (12 September 2019) (see page 308 of Exhibit JSA-7) and 3) of Cabinet Paper Memo No.290/2019 (12 September 2019) (see page 327 of Exhibit JSA-7).
- (b) It appears that in introducing the 4th generation basis for Belonger Status (basis (V) in my summary above), attainable without an interview or cultural test, the Government weighed up the potential loss of revenue from work permit fees and other higher rates in granting Belonger Status more readily in this way, against the benefit to the Territory in the fuller participation of the applicants in the economic activity, types of "economic spin off" which it was thought would "far surpass the loss of direct revenue.....from work permits and work permit exemption related fees" (see Draft Cabinet Paper dated 20 May 2021, comments of the Financial Secretary and in respect of the Budget at paragraphs 6) and 8) at pages 408 and 409 of Exhibit JSA-7).
- (c) It had been hoped that 4th Generation applications might be captured under the 2019 Fast Track initiative, but due to the restricted time-frame applicable to the Fast Track initiative, this did not prove to be the case, as is explained in paragraph 2) of Cabinet Paper Memo No.532/2020 (see page 361 of Exhibit JSA-7).

Monitoring of the process

34. *Point 15 How is the Belongership application process monitored or evaluated in accordance with statutory or policy requirements?*

- 34.1. Cabinet performs a quarterly review of Cabinet decisions, which requires the Ministry, in consultation with the Department, to report back to Cabinet on the execution of their decisions.
- 34.2. The Internal Audit process is available.

35. *Point 16 Has there been any audit or proposed audit of the Immigration Department's Belonger Application Process since the Internal Auditor's 2012 report?*

35.1. There has been no further internal audit since 2014.

35.2. I would invite the Internal Auditor to conduct a fresh audit, with which the Ministry and the Department would be glad to cooperate and from which I am sure we would benefit, especially in light of the review we have necessarily conducted in order to assist the Commissioner.

Quotas

36. *Point 17 Is there any quota in place to limit the amount of applicants who can be granted Belongership status on an annual basis and if so, what is that quota?*

36.1. A quota of 25 Belonger Status approvals per annum was recommended by the Executive Council in 2004, in the administrative guidelines described above.

36.2. This quota was followed for several years but is no longer. Applying a quota, without also limiting the number of applications being made, resulted in an ever increasing back-log of applications.

Rights of Redress

37. *Point 18 If an application is refused, does the applicant have any right of redress and if so, please can you outline the process?*

37.1. There is no right of redress provided for in the legislation.

Sworn by: Joseph Smith Abbott

On 10 September 2021

Pusser's Warehouse, 3rd Floor,
Road Town, Tortola, VG1110,
Virgin Islands

) Joseph Smith Abbott

Before me: KELVIN M. DAWSON

Notary/Commissioner of Oaths

Kelvin M. Dawson
Notary Public



**IN THE MATTER OF THE TERRITORY OF THE VIRGIN
ISLANDS COMMISSION OF INQUIRY 2021**

**AND THE COMMISSION OF INQUIRY ACT (CAP 239) (THE
'ACT')**

**[SEVENTH] AFFIDAVIT OF JOSEPH SMITH
ABBOTT**



Our ref: AGC G 12/2/2

PRIVATE AND CONFIDENTIAL

23 April 2021

(Amended 26 April 2021)

Ms. Rhea Harrikissoon
Solicitor, BVI Commission of Inquiry
Room RB 1.11
22 Whitehall, London
SW1A 2 EG

Dear Ms. Harrikissoon,

Re: Attorney General – Request for Information/Documents No.1 (the “Request”)

I refer to your letter dated 9 April 2021 requesting that I provide the following information:

1. The relevant statutory provisions and any policy in relation to the procurement of Government contracts including:
 - i. Petty contracts; and
 - ii. Contracts of more than \$100,000 in value
2. The relevant statutory provisions and any policy in relation to the sale of Crown land;
3. The relevant statutory provisions and any policy relating to the privileges/benefits available to persons defined in section 2(2) of the Virgin Islands (Constitution) Order 2007 as belonging to the Virgin Islands; and
4. The relevant law relating to who may/is required to sit on a jury.

My response is set out in the paragraphs below:

Government Contracts

The procurement of Government contracts is governed by:

- i. *Public Finance Management Act 2004 as amended by:*
 - a. *Public Finance Management (Amendment) Act 2005*
 - b. *Public Finance Management (Amendment) Act, 2012;*

- ii. *Public Finance Management Regulations, as amended by:*
 - a. *Public Finance Management (Amendment) Regulations, 2007; and*
- iii. *Protocols for Effective Financial Management, 2012*

The *Procurement Bill, 2021* is in the advanced drafting stage.

Sale of Crown Land

The sale of Crown land is governed by:

- i. *Virgin Islands (Constitution) Order, 2007 (see s. 41)*
- ii. *Registered Land Act Cap 229 (see s. 26) as amended by:*
 - a. *Registered Land (Amendment) Ordinance, 1977;*
 - b. *Age of Majority Act, 1994; and*
 - c. *Drug Trafficking Offences (Designated Countries and Territories) Order, 1996*

I am not aware of an overarching policy relating to the sale of Crown land. However, over the years, the Government has developed a number of policies and committees relating to the sale of specific lands, for example:

- (a) Long Look Lands (Nottingham Estate) (see Long Look Lands Commission Titles Act, Cap.225);
- (b) Nibbs Estate Lands;
- (c) Spooner Estate Lands;
- (d) North Sound Lands;
- (e) Anegada Lands; and
- (f) Stevens Lands

The Ministry of Natural Resources would have information on the criteria used in each of these distributions.

Belonger status

Regrettably, the laws of the Virgin Islands have not been revised since 1990 and are not maintained in a comprehensive electronic and searchable format so I am unable to give a definitive list of the “*the privileges/benefits available to persons defined in section 2(2) of the Virgin Islands Constitution Order 2007 as belonging to the Virgin Islands*”. However, the following legislation, regulations and policies are indicative:

- (a) **Virgin Islands (Constitution Order, 2007) (amended 2015)**
 - i. the right (in common with persons holding residence status) to enter and leave the Virgin Islands and immunity from expulsion from the Virgin Islands (s. 18);

- ii. qualification for elected membership (s. 65)
 - iii. the right to vote (s. 68)
 - iv. appointment to the office of Attorney General (unless there is no such person who is suitably qualified and able and willing to be so appointed);
- (b) **Labour Code, 2010**
 - i. preference should be given to Virgin Islanders and Belongers in employment (s. 117);
 - ii. Belongers are not required to hold work permits to engage in employment or self-employment in the Virgin Islands (s. 170). However, this is not a unique privilege/benefit. Persons holding certificates of residence, persons married to Virgin Islanders, persons who have been educated in the Virgin Islands (primary and secondary level) and persons who have resided in the Virgin Islands for an extended period and other categories of persons (e.g persons involved in arbitration for up to 60 days), in accordance with the exemption provisions of the Code and as a matter of policy and practice, are also exempted from holding work permits.
- (c) **Education Regulations, 2016**
 - i. Entitlement to admission to the public education system in common with children of:
 - a. diplomats;
 - b. persons holding certificates of residence;
 - c. persons employed in government service;
 - d. persons ordinarily resident in the Virgin Islands and so on. (see s. 27)
- (d) **Customs Management & Duties (Amendment) Act, 2011**
 - i. personal and household effects of returning Belongers who have resided abroad for 3 or more years and who intend to reside in the Virgin Islands for at least twelve months are exempted from custom duties (s. 22);
 - ii. construction materials for first time Belonger home owners are exempt from custom duties (s. 22)
- (e) **Stamp (Amendment) Act, 2020**
 - i. Exemption from stamp duty on sale of land to Belongers for a limited period during the COVID19 pandemic.
- (f) **Business, Professions and Trade Licence Act (amended by Company Management Act, 1990, Business, Professions and Trade Licences (Amendment) Act, 1991**
 - i. differentiated fees for trade licences (First Schedule)

Juries

The relevant law relating to who may/is required to sit on a jury is governed by:

- i. Jury Act, Cap.36 as amended by:
 - a. Jury (Amendment) Act, 2005; and
- ii. Age of Majority Act, 1994.

A new Jury Act is currently in the drafting stage.

Copies of the relevant legislation are attached.

I trust that my response is helpful. Please let me know if I may assist further.

Yours sincerely,



Dawn J. Smith
Attorney General

Att.

**EXTRACT FROM THE MINUTES OF A MEETING OF EXECUTIVE COUNCIL
OF THE BRITISH VIRGIN ISLANDS HELD AT THE CONFERENCE ROOM
GOVERNOR'S OFFICE OF 27 OCTOBER 2004**

TO: Permanent Secretary, CMO

DATE: 24 August 2005

**Policy on The Grant of Residence and Belonger Status
Memo. No. 367/2004**

1345. In introducing the paper, the Chief Minister paid tribute to the work of the Board of Immigration, and the ad hoc committee under Mr. Edmund Maduro's chairmanship, in producing this report. His paper covered both guidelines within which the Board should make its recommendations, and proposed changes to legislation. The ensuing broad-ranging discussion covered the following points:

- (a) The Board had noted, in its first recommendation, the need to formulate immigration policy as part of the Territory's national goals and objectives, and not in isolation. There was a need for further work on this, which would need to be informed by statistical information, including the results of the 2001 census. Council did not consider that it could usefully, at this stage, set some sort of target figure for the population of the BVI, but recognised the need to develop policies which controlled the inflow of potential immigrants. This should be taken forward in the framework of the draft Labour Code which proposed setting fixed terms for Work Permits. Against this had to be set the very real reluctance of employers at having to lose good employees at the end of the Work Permit period.
- (b) In the finance and tourism sectors, the long-term health of which was crucial to the BVI economy, there needed to be arrangements which allowed employers to bring in skilled professionals to develop the business. This needed to be linked to personal development plans which would enable more BVI Islanders to occupy to the top jobs in both sectors.
- (c) The proposed policy would give some additional entitlement to non-Belongers, in particular the right for their children born here to enjoy Belonger status.
- (d) There was a need to respect the rights of those whose roots lay in the BVI but who were currently abroad: hence the need for a more generous regime in respect of Belonger status for children born overseas to parents who were Belongers-by-descent.
- (e) Where the acquisition of Belongership by those of BVI descent was dependent on a decision of Council, the Board of Immigration should give these applications first priority.

- (f) Council considered the residence and belonging implications of the provisions in Section 2(2) of the Constitution for persons “settled” in the BVI, particularly in respect of non-belonger public servants whose entitlement to be so regarded stemmed from their exemption from immigration control. At the same time, it would be important not to cause alarm amongst those already in this category. The interests of staffing the RVIPF needed to be given particular consideration.

1346. Council accepted the Report and Recommendations of the Board of Immigration with regard to the Grant of Residence and Belonger Status of March 2004 (**Appendix 1 to Memo 367**) together with the report of the ad hoc committee summarised in Mr. Edmund Maduro’s letter of 3 February (**Appendix 2 to Memo 367**).

1347. Council approved 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) 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.

1348. Council 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 belongership 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.

1349. Council further invited the Chief Minister's Office :

- (a) to review the Immigration and Passport Act (Cap 130) with a view to ensuring that all non-belongers remained subject to immigration control;
- (b) to make proposals for special arrangements for Residence Status for substantial investors in the Territory;
- (c) to draw up a revised fee schedule for the processing of all applications for belonger and resident status with a view to increasing fees as appropriate;
- (d) to propose a Public Information Strategy for sharing information about the new policy with the public and submit it to Council for approval by 30 November.

**IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS COMMISSION OF
INQUIRY 2021
AND THE COMMISSION OF INQUIRY ACT (CAP 237) ("the Act")**

Submissions regarding Belonger Status

Unless otherwise indicated references in square brackets are to the bundle accompanying the relevant Warning Letters

References to the accompanying bundle of authorities are given in square brackets as follows [AB/tab/page].

1. These submissions have been prepared on behalf of the Attorney General in response to the Warning Letters sent at the direction of the Commissioner, to Hon. V.O. Wheatley, the Minister of Natural Resources, Labour and Immigration (**"the Minister"**) to the Cabinet and to the Premier, dated 15 September 2021 (**"the Warning Letters"**).
2. The Letters ask the Attorney General to file submissions on the question whether the Policy as defined in Appendix A to each Warning Letter is unlawful, or whether Cabinet has acted ultra vires the Immigration and Passport Amendment Act (Cap.130) (**"the Act"**), or otherwise.
3. The potential criticisms set out in Appendix A to each letter raise the question whether Cabinet would have acted unlawfully in applying the Policy as *"an individual applying for Belonger status would have a legitimate expectation that once they had attained 10 years residence in the Territory, they could make an application which would be considered in accordance with the Act"*.

4. They further raise the question whether the Cabinet has, in adopting and adhering to the Policy, acted inconsistently with the principles of good governance.
5. In addition, the Commission has asked that we consider the following points:
 1. Whether the Policy (or any part thereof) has been made public, and if so in what manner;
 2. On what legal basis or under which legislative provision(s) was the Policy introduced and on what date;
 3. On what legal basis or under which legislative provision(s) the Policy operated since its introduction through to date;
 4. In Section 45 of the Act, what is meant by subsections (m) and (n);
 5. Details of the time period(s) over which the Policy has been government policy.

Policy and Practice

6. In the Warning Letters, the Policy is defined by reference to the administrative guidelines set out in an Executive Council decision entitled 'Policy on the Grant of Residence and Belonger Status 367/2004', dated 27 October 2004 **[402-404]**. The Internal Auditor refers to it as having been dated and approved on 20 July 2006, (Internal Audit Report 2012 p.5, 9.1 and Appendix I 3rd page **[6 & 21]**). However, the Immigration Department ("**the Department**") is unsure as to when the Policy was actually promulgated but believes it was in force from 2004, in accordance with the date of Extract 367/2004. The Appendices make particular reference to paragraph 1347(c) which included: "*Once the backlog of those identified at (b) 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” [403]. We have adopted the defined term ‘Policy’ for ease of reference.

7. The application of the Policy by way of the benchmark of 20 years residency described in the Seventh Affidavit of Mr Smith Abbott, (“**JSA 7th**”) at paragraph 10.10 (JSA7th/10.10 [1335]) (“**the Benchmark**”), was an administrative practice deployed by the Immigration Department (“**the Department**”) as a method of establishing an order of priority for the consideration of applications based on a period of residence, made under subsections 16(1) and 16(3) and 16(1) and 16(4) of the Act [1438], referred to as ‘tenure’ applications, once the historic backlog had been cleared (JSA 7th/9.3(c), 10.10 and 32.4 [1332, 1335 & 1347]). The backlog is described in the evidence of Dr Smith (Day 24, p.17/1-10 [232]). It is understood that further back-logs may well have built up from time to time since then and that there is a continuing danger of recurring back-logs.
8. Insofar as the Internal Auditor in 2012 sought to suggest that a benchmark of 25 years has been used (Internal Audit Report 2012 p.8, 9.10 [9] and Internal Audit Follow-Up Report 2014 p.3 [38]), we understand that is incorrect and that the Benchmark period has been 20 years (JSA7th/9.3 (c) and 10.10) [1332 & 1335] and the evidence of Dr Smith, Day 24 p.17/10-12 [232]).
9. The Department typically receives on average 110 applications per annum. The Department has limited resources to meet that demand. The Internal Auditor pointed out that in 2012 the Department only had one officer, the Senior Executive Officer otherwise known as the “Status Unit Officer”, who was responsible for all the administrative functions relating to both the Belonger and Residency Application Processes (Internal Audit Report 2012 2, 1.1.4 and p.7, 9.8 [3 & 8]). She observed 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*” (Internal Audit Report 2012 p.7, 9.8 [8]). Her third recommendation was that a structured and staffed Status Unit be established to deal with the process (Internal Audit Report 2012 p.13, 10.3 [14]). Following the 2012 Report, it was the intention of the Department to hire three officers for the Status Unit (Management’s Response 2 August 2012 10.3 [32]). By 2014, the single Senior

Executive Officer had been replaced, within the Status Unit, by a team of two (Internal Audit Follow-Up Report 2014 p.5 [40]). At that time, additional assistance was provided by the Premier's Office, including arranging interviews, preparing summary sheets and the Cabinet Paper (Internal Audit Follow-Up Report 2014 p.6 [41]). However, those tasks are now again completed solely by two officers in the Department (JSA7th/15.1, 15.2, 15.7, 15.13 & 15.15) [1337-1338 & 1340]).

10. It will be apparent from the description of the process in JSA7th that processing Belonger Status applications is time and resource consuming (15.1 to 15.18 [1337-1340])
11. As well as a practical measure for prioritising and dealing with the flow of applications to an under-staffed Unit at a manageable rate, the rationale behind the Policy and the Benchmark seems also to have included the need to take time and care in the grant of something as significant as Belonger Status, to ensure that individuals were properly assimilated into the community (see the evidence of Dr Smith Day 24 p.12/2-22) [227]. It is likely that applicants who have passed the Benchmark 20 years of residence in the Territory will have more compelling applications, bearing in mind the criteria to which Cabinet are required to have regard pursuant to subsection 16(8) of the Act [1439], for example "*close personal connection with the territory*" pursuant to subsection 16(8)(b). The examination of close personal connection using the Point System Form is described in JSA7th/15.8(b) [1338].
12. The Department understands that the Benchmark has been applied since about 2004.
13. As far as we are aware, neither the Policy nor the Benchmark have been published (JSA7th/22.1-22.2 [1343]).

Legal Principles

14. The Warning Letters appear to invoke public law principles in respect of legitimate expectation, illegality and fettering of discretion.

Legitimate Expectation

15. In summary, a claim for a breach of a substantive legitimate expectation requires the claimant to show breach of a promise or practice based on a clear and unequivocal representation, devoid of relevant qualification (De Smith's Judicial Review 8th edition (2018) ("**De Smith**") 12-031 to 12-032 [**AB/2/6-7**] and *United Policyholders Group v Attorney General of Trinidad and Tobago* [2016] UKPC 17; [2016] 1 W.L.R. 3383, Lord Neuberger of Abbotsbury PSC, p.3395D-E, [37] [**AB/6/72**]).
16. The source of a legitimate expectation may be an express promise, or it may be implied from a regular practice which a claimant could reasonably expect to continue (De Smith 12-016 [**AB/2/5**]).
17. The concept of legitimate expectation is normally otiose in cases where there has been no representation, by words or conduct, by the public authority in question to a claimant seeking to rely on it: see *R (Munir) v Secretary of State for the Home Department* [2011] EWCA Civ 814, Stanley Burnton LJ [42] [**AB/4/42**], whose reasoning was approved by the Supreme Court *R (Munir) v SSHD* [2012] UKSC 32; [2012] 1 W.L.R. 2192 Lord Dyson JSC p.2199E [19] [**AB/5/51**]. Where the claimant does not know of the policy they seek to rely on, the question is therefore more likely to be whether the executive have acted lawfully.

Illegality

18. A decision or exercise of a public function may be unlawful if it is incompatible with primary legislation (De Smith, 5-001 to 5-002 [**AB/1/1-2**]).
19. To evaluate whether such illegality has taken place it is necessary to construe the instrument measured against which the exercise of the public function in question is said to be unlawful (De Smith 5-002 to 5-003) [**AB/1/1-2**].

Fettering Discretion

20. The adoption of a rigid policy about how a discretion will be exercised may unlawfully fetter that discretion (De Smith 5-140) **[AB/1/3-4]** and *R (S) v Secretary of State for the Home Department* [2007] EWCA Civ 546; [2007] Imm.A.R.781, Carnwath LJ at [50] **[AB/3/22]**. Where an administrative practice of prioritising some applications over others has a rational basis, it may be lawful: see *R(S)* per Carnwath LJ [52] and Moore-Bick LJ [62] **[AB/3/22 & 24]**.

1.Has the Policy been made Public?

21. We understand that neither the Policy, nor the Benchmark have been published, as we have indicated at paragraph 13 (above).

2. On what legal basis or under which legislative provision(s) was the Policy introduced and on what date?

22. Once the minimum criteria of 10 or 7 years ordinary residence, in subsections 16(1),(3) and (4) **[1438]** of the Act are fulfilled, the legislation allows Cabinet the latitude to make policy in respect of how applications are to be addressed. This appears to have been the understanding of Dr Smith (Day 24 p.9/22-24 **[224]**). It was on this basis that the Policy was approved.
23. Further, the law gives the Department, through the Board, the power to regulate their own procedures, as confirmed by the Internal Auditor in the 2012 Report (Internal Audit Report 2012 p.3, 1.1.7 and p.11, 9.19 **[4 & 12]**). It was on this basis that the Benchmark was applied.
24. As we have said at paragraph 12 (above), the Department believes that the Policy was promulgated in 2004.

3. On what legal basis or under which legislative provision(s) has the Policy operated since its introduction through to date?

25. The answer to Question 2 above, is repeated.

4. In section 45 of the Act what is meant by subsections (m) and (n)

26. Subsections 45 (m) and (n) **[1445]** provide as follows:

“The Cabinet may make regulations-

.....

(m) prescribing anything that is authorised or required to be prescribed by this Act;

And

(n) generally for the carrying out of the objects and purposes of this Act”.

Subsections 45(m) and (n) provide the Cabinet with a broad power to make regulations for matters authorised or required to be prescribed by the Act and to carry out any of the “*objects and purposes of*” the Act. The regulations can, for example, deal with the processing of applications, the evidence required in support of them, the forms of application etc. (see paragraph 31.2 below).

5. Details as to the time period(s) over which the Policy has been government policy

27. As we have said at paragraph 10 (above) it is believed that the Benchmark has been applied by the Department since about 2005.

Is there a relevant Legitimate Expectation arising out of the relevant provisions of the Act and if so what is it?

28. The suggestion appears to be that an individual applying for Belonger Status may have had a ‘legitimate expectation’ that once an applicant had attained 10 years residence in the Territory (or presumably 7 in exceptional cases falling within subsection 16(4)), they could make an application which would be considered according to the Act: see Appendix A in the Warning Letters at 1 and 3. The implication in Appendix A to the Warning Letters appears to be that a legitimate expectation arose that applications be dealt with immediately or within some, as yet unspecified, time limit.

29. Neither the Policy nor the Benchmark prevents an application being made, to be considered in due course under the Act, after the minimum residence period has been attained (see the evidence of Dr Smith Day 24 p.11/4-7 **[226]**).
30. In any event, no question of legitimate expectation arises here from the provisions of subsections 16(3) and (4) **[1438]**.
- 30.1. No promise or practice giving rise to the suggested legitimate expectation has been identified. It does not appear that any relevant policy or practice has been published (JSA7th/22.1 to 22.2 **[1343]**).
- 30.2. No unqualified promise, in any representation made by or practice of the Virgin Islands Government, has been identified which could give rise to a legitimate expectation that applications based on a residency period of 10 or 7 years or more (depending upon whether subsection 16(3) or (4) applied) would be considered within any particular time frame.

Was the Policy Ultra Vires?

31. The question is whether the 'Policy' or Benchmark applied in respect of the manner of processing applications contravene the provisions of subsections 16(1) and (3) and/or 16(1) and (4) of the Act, properly construed.
- 31.1. Subsections 16(3) and (4) **[1438]** provide for a minimum qualifying period of 10 or 7 years. The Benchmark of 20 years complies with the minimum periods.
- 31.2.** Regulation 8(1) of the Immigration and Passport Regulations 2014 ("**the 2014 Regulations**") **[1460]** prescribes the form in which applications pursuant to subsections 16(3) and 16(4) should be made and that they should be made to the Chief Immigration Officer. Regulation 8(2) provides that any application received should be forwarded to the Board and that

the Board should then consider the application and forward it “*with their observations thereon*” to Cabinet [1460].

- 31.3. The purpose identified for the Department, acting through the Immigration Board pursuant to sections 13 to 15 [1436-1438] and subsections 16 (1), (3) and (4) of the Act, is to consider and provide recommendations to Cabinet in respect of ‘tenure’ applications for Belonger Status (as described in JSA7th /15.5 and 24.1 [1337-1343]). To fulfil that purpose, the Board must organise the processing of applications. Neither the Act, nor the Regulations made thereunder, specify the timeframe within which applications for Belonger Status will be considered.
- 31.4. Subsections 16(1), (3) and (4) then give Cabinet a broad discretion as to whether applications should be granted: “*Cabinet, after consultation with the Board, may upon application being made in the manner prescribed grant a certificate*” (subsection 16(1) [1438] and JSA7th/23.1 [1343]). As the Internal Auditor observed, the application of the Benchmark “*does not reflect an unlawful recommendation of status*” (Internal Audit Report 2012 p.5, 9.1 [6]). It concerns the processing of applications and does not affect the recommendations or grants of Belonger Status ultimately made.
- 31.5. However, the Attorney General accepts that the Act may be construed to imply a right, absent any other factors, to have an application *considered* once the period of 10 years had elapsed (or 7 in exceptional circumstances).
32. The Internal Auditor expressed the concern that the practice of applying the Benchmark “*may deny applicants a right duly theirs as the law makes them eligible to **apply** for status after ten(10) years*” (Internal Audit Report of 2012 p.2, 1.16 [3] 8, paragraph 9.10 [9], our emphasis). As we have already noted at paragraph 30 (above), the Benchmark did not prevent applications being made at any time after the 10 or 7 year minimum residence requirement had been fulfilled. It, therefore, did not deny applicants the right to apply. The Attorney agrees with

the Internal Auditor's observation if it is meant that applicants may have a right to have their applications *considered* after that time.

33. In applying the Benchmark, the Department would say that it did not preclude the possibility of considering applications earlier, however, in practice, the Attorney has been unable (at the time of writing) to find evidence of it happening.
34. It is also plain that, as we have described at paragraphs 7 to 10 (above) the Department have applied the Benchmark in good faith, for understandable reasons. Those appear to have included an attempt to prioritise and control the flow of applications to a heavily overburdened Unit. Further, as we have pointed out at paragraph 11, the application of the Benchmark is likely to have resulted in stronger applications falling to be considered by the Unit. The policy and practice reflected in the Benchmark was to address those who had been in the Virgin Islands for the longest first. It was a reasonable approach to the processing of applications. It was the reverse of the practice applied in *R(S)* which was held to be irrational and unlawful: see per Carnwath LJ at [51] and [52] **[AB/3/22]**.
35. Nevertheless, if the Benchmark was applied without exception, or continued beyond the existence of a back-log, the Attorney General would accept that raises significant questions as to its lawfulness, either because the Act may imply a right to have an application considered once the minimum criteria are fulfilled, or because to apply the Benchmark in an inflexible manner was to fetter the Department's discretion.

The Principles of Good Governance

36. It is submitted that it in light of the absence of a stipulated time-frame in the legislation, within which applications should be addressed and bearing in mind the factors to which we have already referred, it was understandable for the Executive Council to take the view that applications should be addressed as the applicants reached the 20th anniversary of their arrival in the Territory and for the Department to seek to prioritise applications by reference to the 20th anniversary of an Applicant's arrival.

37. Nevertheless, if as may be, the Policy was applied in an inflexible way, that and the failure to inform potential applicants about the Benchmark and publish a policy setting out the approach that would be taken to such applications may not conform to principles of good governance.
38. It is well understood by the Cabinet that this difficult area of law and administrative policy and practice requires urgent review and redesign. The Department has allocated the funds to engage a consultant to assist in that process (JSA7th /9.3(g) **[1332]**).

24 September 2021

The Rt. Hon Sir Geoffrey Cox QC

Edward Risso-Gill

(Counsel for the Attorney General)

APPENDIX A

Belongership: Potential Criticisms – RESPONSE of the Hon. Premier

	Potential Criticism/RESPONSE	Evidence/Comment
1, (Of Premier WL No. 2 and Cabinet WL No.2)	<p>In 2011 the Cabinet acted ultra vires the Immigration and Passport (Amendment) Act (Cap, 130) ("the Act") or otherwise in granting Belonger Status to approximately 224 individuals</p> <p>On the available evidence disclosed to the COI, it appears that:</p> <ol style="list-style-type: none"> 1. On 19 October 2011 the Cabinet granted Belonger status to 190 individuals ultra vires section 16 of the Act or otherwise because: <ol style="list-style-type: none"> a. Those individuals had not made any application for Belonger status in the manner prescribed by section 16(1) of the Act (or at all); b. The Cabinet failed to consult with the Board of Immigration ("the Board") as it was required to do so by section 16(1) of the Act (or at all); c. The individuals granted Belonger status were nominated by individual members of the Cabinet; d. Due to the arbitrary manner in which these individuals were nominated for and granted Belonger status by the Cabinet they may not have met other requirements under the Act including for example, good character and length of residence 2. In 2011, the Cabinet also granted Belonger status to 32 individuals ultra vires section 16 of the Act or otherwise because: 	<p>Internal Auditor Report – Immigration Board: Belonger Application Process (June 2012), pages 1-35</p> <p>Internal Auditor Report – Follow-up Audit Review of the Department of Immigration Belonger Application Process (January 2014), pages 36-49</p> <p>COI Hearing Transcript for Day 22 dated 6 July 2021, pages 76-104</p> <p>COI Hearing Transcript for Day 24 dated 8 July 2021, pages 218-238</p> <p>Fourth Affidavit of Joseph Smith Abbott dated 26 August 2021 and exhibits pages 364-411</p> <p>Seventh Affidavit of Joseph Smith Abbott dated 10 September 2021 and exhibits, pages 1328-1769</p> <p>Disclosure provided to the COI on 23 August, pages 412-795 and 2 September 2021, pages 796-1322 but in particular:</p> <p>Cabinet Decision dated</p>

	Potential Criticism/RESPONSE	Evidence/Comment
	<ul style="list-style-type: none"> a. The Cabinet failed to consult with the Board as it was required to do so by section 16(1) of the Act (or at all); b. 3 individuals to whom Belonger status was granted already possessed such status; and c. Due to the arbitrary manner in which these individuals were nominated for and granted Belonger status by the Cabinet they may not have met other requirements under the Act e.g. good character and length of residence. <p>3. The Cabinet granted Belonger status to an individual ultra vires section 16 of the Act or otherwise because:</p> <ul style="list-style-type: none"> a. The individual had not made any application for Belonger status in the manner prescribed by section 16(1) of the Act (or at all). b. The Cabinet failed to consult with the Board as it was required to do so by section 16(1) of the Act (or at all); c. Due to the arbitrary manner in which these individuals were nominated and granted Belonger status by the Cabinet they may not have met other requirements under the Act e.g. good character and length of residence. <p>4. The Cabinet granted Belonger status to an individual who already possessed such status.</p> <p>The way in which the Cabinet granted these individuals Belonger status, particularly given that 2011 was an election year, suggests that it had a deliberate and improper motive in</p>	<p>13 April 2011 re Memo No 139/2011, pages 417-420</p> <p>Cabinet Paper and Decision dated 19 October 2011 re No.430/2011, pages 421-428</p>

	Potential Criticism/RESPONSE	Evidence/Comment
	<p>making these decisions.</p> <p>In granting individuals Belongership status as it did, the Cabinet acted inconsistently with the principles of good governance; and the identified evidence set out may fall within paragraph 1 of the COI Terms of Reference because, when taken as a whole, it may amount to information that corruption, abuse of office or other serious dishonesty in relation to officials (notably members of the Cabinet) may have taken place in the form of action being knowingly taken other than in the public interest.</p>	
	<p>RESPONSE</p> <p>1. The events described in the Warning Letter took place over 10 years ago between April and October 2011. As with the Neighbourhood Partnership Project, which commenced 13 years ago, I must respectfully question whether they can truly be said to have taken place “<i>within recent years</i>”, and thus properly form part of the Commissioner’s Terms of Reference.</p> <p>2. I also wish to record that I have not had an opportunity to attempt to recollect and establish events that go back 10 years by reference to documents and records, or to consult other surviving members of the Cabinet and senior officials at the time. Nevertheless, I set out below the limited amount of what I can remember of the</p>	

	Potential Criticism/RESPONSE	Evidence/Comment
	<p>events to which the Warning Letter refers, although my recollection has been substantially affected by the passage of time.</p> <p>3. In 2011, I was the Minister of Education. As far as I can recall, the then Premier, the late Ralph T O Neal, had been concerned that the slow processes of the Immigration Board had resulted in a very large backlog of persons who were frustrated and complaining that they were unable to be considered for Belonger status by the Immigration Board. The then Premier informed the Cabinet that he intended to bring before it the cases of persons so affected before the end of his term of office and invited members of the Cabinet to bring such persons to his attention. I cannot recall if I brought any names to the attention of the Office of the then Premier.</p> <p>4. As with any meeting of the Cabinet, even in those days, the Attorney General would have been present, and the Governor would have acted as its chairman.</p> <p>5. On the submission of a paper to the Cabinet by the late Premier, it decided to grant the status to various persons between April to October 2011. The Papers</p>	

	Potential Criticism/RESPONSE	Evidence/Comment
	<p>in those days were not in the same form as those we submit now but to my recollection, they did not indicate the views of the Attorney General nor did he at those meetings advise that the grants were unlawful. I do not recall that the Governor registered his objections. I am quite confident that if, which I do not believe it could, such a thing had happened now, the Attorney General would have made and recorded her unambiguous advice to that effect long before the matter reached the Cabinet.</p> <p>6. However, sometime <i>after</i> the Cabinet's consideration of those persons, I believe the AG did advise that the grants were unlawful and as far as I can recollect, the decisions were not confirmed. I understood that these persons' applications were then later processed by the Immigration Board in the normal way. However, by then, I was out of government.</p> <p>7. It is suggested this decision might have been for electoral reasons. That is simply not true. As I understand it, the Cabinet decision to grant Belonger status to 190 of these persons was made on 19 October, confirmed on 26 October and the extract is</p>	<p>[426]</p>

	Potential Criticism/RESPONSE	Evidence/Comment
	<p>dated 1 November. The House of Assembly was dissolved on 13 September 2011. Section 6 (3) of the Elections Act 1994 (as amended) provides that unless an application to be registered as a voter is made by the 2nd day after the House is dissolved, the Supervisor of Elections shall reject the application. There was, therefore, no prospect of these persons voting in the election.</p> <p>8. Even if that had not been the case, the time available for those affected to register for the general election as voters was one week. It is impossible that they could have been issued with a Belonger card, even if they had then been notified, and applied and been entered onto the electoral roll in time to vote in the election.</p> <p>9. Therefore, I reject the suggestion. The decision was not taken for any such reasons but because, as I recall the events, the then Premier was acutely concerned about the injustices that a prolonged backlog of applications had caused and wanted to remedy some of those injustices before the end of his term of office.</p>	<p>Section 6 of the Elections Act 1994 and subsections 4 (a) and 7(b) of the Elections (Amendment) Act 2011, attached</p>
1 (of WL No.2,	The Executive Council in a decision titled	Internal Auditor Report-

	Potential Criticism/RESPONSE	Evidence/Comment
the Hon.V.Wheatley) and 1. (of Premier WL No.2 and Cabinet WL No.2)	<p>'Policy on The Grant of Residence and Belonger Status Memo No.367/2004' and dated 27 October 2004, approved a number of administrative guidelines ("the Policy") for the Board of Immigration in the processing of applications for Residence and Belonger Status which included:</p> <p>"</p> <p>c) Once the backlog of those identified at (b) 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;</p> <p>"</p> <p>On the available evidence disclosed to the COI, it appears that the Policy has been applied by Cabinet since its promulgation. In adopting the Policy, the Cabinet has acted unlawfully and/or acted ultra vires the Act or otherwise as an individual applying for Belonger status would have a legitimate expectation that once they had attained 10 years residence in the Territory, they could make an application which would be considered in accordance with the Act.</p> <p>In adopting and adhering to the Policy as it did, the Cabinet has also acted inconsistently with the principles of good governance.</p>	<p>Immigration Board: Belonger Application Process (June 2012), pages 1-35</p> <p>Internal Auditor Report – Follow-up Audit Review of the Department of Immigration Belonger Application Process (January 2014), pages 36-49.</p> <p>COI Hearing Transcript for Day 22 dated 6 July 2021, pages 76-104</p> <p>COI Hearing Transcript for Day 24 dated 8 July 2021 pages 218-238</p> <p>Fourth Affidavit of Joseph Smith Abbot dated 26 August 2021 and exhibits, pages 364-411</p> <p>Seventh Affidavit of Joseph Smith Abbott dated 10 September 2021 and exhibits, pages 1328-1769</p> <p>Disclosure provided to the COI on 23 August, pages 412-795</p> <p>Disclosure provided to the COI on 2 September 2021 pages 796-1322</p>
	<p>RESPONSE</p> <p>10. I refer to and adopt the response of the Hon. V Wheatley dated 24 September 2021, together with the</p>	

	Potential Criticism/RESPONSE	Evidence/Comment
	supporting submissions of the Attorney General.	

The facts and matters set out in this response are true to the best of my recollection knowledge, and belief.



.....

The Honourable Andrew Fahie, Premier of the Virgin Islands

28 September 2021

APPENDIX A

Belongership: Potential Criticisms

(All references are to the bundle accompanying the relevant Warning Letters)

	Potential Criticism/RESPONSE	Evidence/Comment
1.	<p>The Executive Council in a decision titled 'Policy on The Grant of Residence and Belonger Status Memo No.367/2004' and dated 27 October 2004, approved a number of administrative guidelines ("the Policy") for the Board of Immigration in the processing of applications for Residence and Belonger Status which included:</p> <p>"</p> <p>c) Once the backlog of those identified at (b) 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;</p> <p>....."</p> <p>On the available evidence disclosed to the COI, it appears that the Policy has been applied by Cabinet since its promulgation. In adopting the Policy, the Cabinet has acted unlawfully and/or acted ultra vires the Act or otherwise as an individual applying for Belonger status would have a legitimate expectation that once they had attained 10 years residence in the Territory, they could make an application which would be considered in accordance with the Act.</p> <p>In adopting and adhering to the Policy as it did, the Cabinet has also acted inconsistently with the principles of good governance.</p>	<p>Internal Auditor Report- Immigration Board: Belonger Application Process (June 2012), pages 1-35</p> <p>Internal Auditor Report – Follow-up Audit Review of the Department of Immigration Belonger Application Process (January 2014), pages 36-49.</p> <p>COI Hearing Transcript for Day 22 dated 6 July 2021, pages 76-104</p> <p>COI Hearing Transcript for Day 24 dated 8 July 2021 pages 218-238</p> <p>Fourth Affidavit of Joseph Smith Abbot dated 26 August 2021 and exhibits, pages 364-411</p> <p>Seventh Affidavit of Joseph Smith Abbott dated 10 September 2021 and exhibits, pages 1328-1769</p> <p>Disclosure provided to the COI on 23 August, pages 412-795</p> <p>Disclosure provided to the COI on 2 September 2021 pages 796-1322</p>

	Potential Criticism/RESPONSE	Evidence/Comment
	<p>RESPONSE (The Policy)</p> <p>(a) The application of the Policy by way of the Benchmark of 20 years residency described in JSA7th/10.10 ("the Benchmark") was an administrative practice, deployed by the Immigration Department ("the Department") as a method of establishing an order of priority for the consideration of applications based on a period of residence, made under subsections 16(1) and 16(3) and 16(1) and 16(4) of the Act [1438], referred to as 'tenure' applications, once the historic back-log had been cleared.</p>	<p>JSA 7th paragraphs 9.3(c), 10.10 and 32.4 [1332, 1335 & 1347] and the evidence of Dr Smith, Day 24 p.17/10-12 [232]</p> <p>The backlog is described in the evidence of Dr Smith Day 24 p.17/1-10 [232]</p> <p>Extract 367/2004 is at [402-404]</p>
	<p>(b) I believe further back-logs have built up from time to time since then, with which the application of the Benchmark has assisted and, I understand, may still continue to assist.</p>	
	<p>(c) The Department typically receives on average 110 applications per annum. The Department has limited resources to meet that demand. The Internal Auditor pointed out that in 2012 the Department only had one officer, the Senior Executive Officer otherwise known as the Status Unit Officer, who was responsible for all the administrative functions relating to both the Belonger and Residency Application Processes). The Internal Auditor observed that <i>"the magnitude of work required for the efficient and effective flow of the process is greater than the human resources assigned to the function"</i>.</p> <p>(d) The Internal Auditor's third recommendation was that a structured and staffed Status Unit be established to deal with the process. Following the 2012 Report, it was the intention of the Department to hire three</p>	<p>Internal Audit Report 2012 2, 1.1.4 and p.7, 9.8 [3 & 8]</p> <p>Internal Audit Report 2012 p.13, 10.3 [14]).</p>

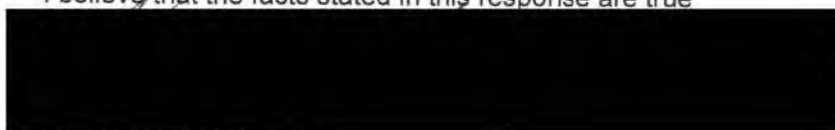
	Potential Criticism/RESPONSE	Evidence/Comment
	<p>officers for the Status Unit. By 2014 the single Senior Executive Officer had been replaced, within the Status Unit, by a team of two. At that time, additional assistance was provided by the Premier's Office, including arranging interviews, preparing summary sheets and the Cabinet Paper. However, those tasks are now again completed solely by two officers in the Department.</p>	<p>Management's Response 2 August 2012 10.3 [32]</p> <p>Internal Audit Follow-Up Report 2014 pp 5-6 [40]-[41]</p> <p>JSA7th/15.1, 15.2, 15.7, 15.13 & 15.15 [1337-1338 & 1340]</p>
	<p>(e) Processing Belonger Status applications is time and resource consuming.</p>	<p>JSA7th /15.1 to 15.18 [1337-1340])</p>
	<p>(f) I understand that the rationale behind the Policy seems also to have included the need to take time and care in the grant of something as significant as Belonger Status, to ensure that individuals were properly assimilated into the community.</p> <p>(g) It is likely that applicants who have passed the Benchmark 20 years of residence in the Territory will have more compelling applications, bearing in mind the criteria to which Cabinet are required to have regard pursuant to subsection 16(8) of the Act, for example "<i>close personal connection with the territory</i>", pursuant to subsection 16(8)(b) [1439].</p>	<p>See the evidence of Dr Smith Day 24 p.12/2-22) [227]</p> <p>The examination of close personal connection using the Point System Form is described in JSA7th/15.8(b) [1338])</p>
	<p>(h) Insofar as the Internal Auditor in 2012 sought to suggest that a benchmark of 25 years has been used, I understand that is incorrect and that the Benchmark period has been 20 years.</p>	<p>See (Internal Audit Report 2012 p.8, 9.10 [9] and Internal Audit Follow-Up Report p.3 [38])</p> <p>See JSA 7th/9.3 (c) and 10.10 [1332 & 1335]</p>

	Potential Criticism/RESPONSE	Evidence/Comment
		See also the evidence of Dr Smith, Day 24 p11/17-20 and p.17/10-12 [232]
	Additional Points of Fact Enumerated in the Request for Legal Submissions	
	1. Whether the Policy (or any part thereof) has been made public, and if so in what manner	
	RESPONSE (i) I understand that the Policy has not been made public.	See JSA 7 th paragraphs 22.1-22.2 [1343]
	5. Details as to the time period(s) over which the Policy has been government policy.	
	RESPONSE (j) As I understand it, from discussions with the Department, the Benchmark has been used since about 2005, the Policy having been in force since 2004.	The Internal Auditor gave the date of 20 July 2006 for the approval of the administrative guidelines in Extract No.367/2004 Internal Audit Report 2012 Appendix I 3 rd page [21]. The Department is unsure as to when the Policy was actually promulgated, but believes it was in force from 2004.
	(k) There have been no further iterations of policy in this context since 2004, which is	JSA 7 th at paragraph 9.3 [1331-1332]

	Potential Criticism/RESPONSE	Evidence/Comment
	why JSA 7 th at paragraph 9.3 only refers to Extract No.367 of 2004.	
	<p>RESPONSE (Breach of a Legitimate Expectation, Illegality)</p> <p>(l) In applying the Benchmark, the Department did not preclude the possibility of considering applications earlier.</p> <p>(m) However, the policy and practice reflected in the Benchmark was to address those who had been in the Virgin Islands for the longest first, which was a reasonable approach.</p>	
	<p>(n) For the reasons given in the submissions from the Attorney General,</p> <p>(i) no question of breach of a legitimate expectation arises.</p> <p>(ii) It is recognised that whilst the Benchmark was applied in good faith and for understandable reasons, including the continuing danger of a recurring back-log, the Attorney General has pointed out the potential for significant questions to arise as to its lawfulness.</p>	The broad discretion given to Cabinet is described in JSA 7 th at paragraph 23.1 [1343]
	<p>RESPONSE (Principles of Good Governance)</p> <p>(o) In light of the absence of a stipulated time-frame in the legislation within which applications should be addressed, it was understandable for the Executive Council to take the view that applications should be addressed as the applicants reached the 20th anniversary of their arrival in the Territory</p>	JSA 7 th at paragraph 9.3 (c) and 10.10 [1332 & 1335]

	Potential Criticism/RESPONSE	Evidence/Comment
	<p>and for the Department to seek to prioritise applications by reference to that anniversary.</p> <p>(p) However, I recognise that an inflexible application of the Policy and the failure to inform potential applicants about the Benchmark and publish a policy setting out the approach to Belonger Status applications may not conform to principles of good governance.</p> <p>(q) I understand that this difficult area of law, policy and practice is in urgent need of review and redesign. We have allocated the funds to engage a consultant to assist in that process.</p>	<p>JSA 7th at paragraph 9.3 (g) and 10.10 [1332]</p>

I believe that the facts stated in this response are true



Hon Vincent M Wheatley

24 September 2021

INTERNAL AUDIT DEPARTMENT



Immigration Board: Belonger Application Process

June 2012

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APPENDIXES

Appendix I - Legislation and Policy

Appendix II - Senior Executive Officer (Status Unit Officer) Job Description

Appendix III - Belonger Application Status Process and Flowchart

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 probability 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 Stouff 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 BVIIslander 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 belongership 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

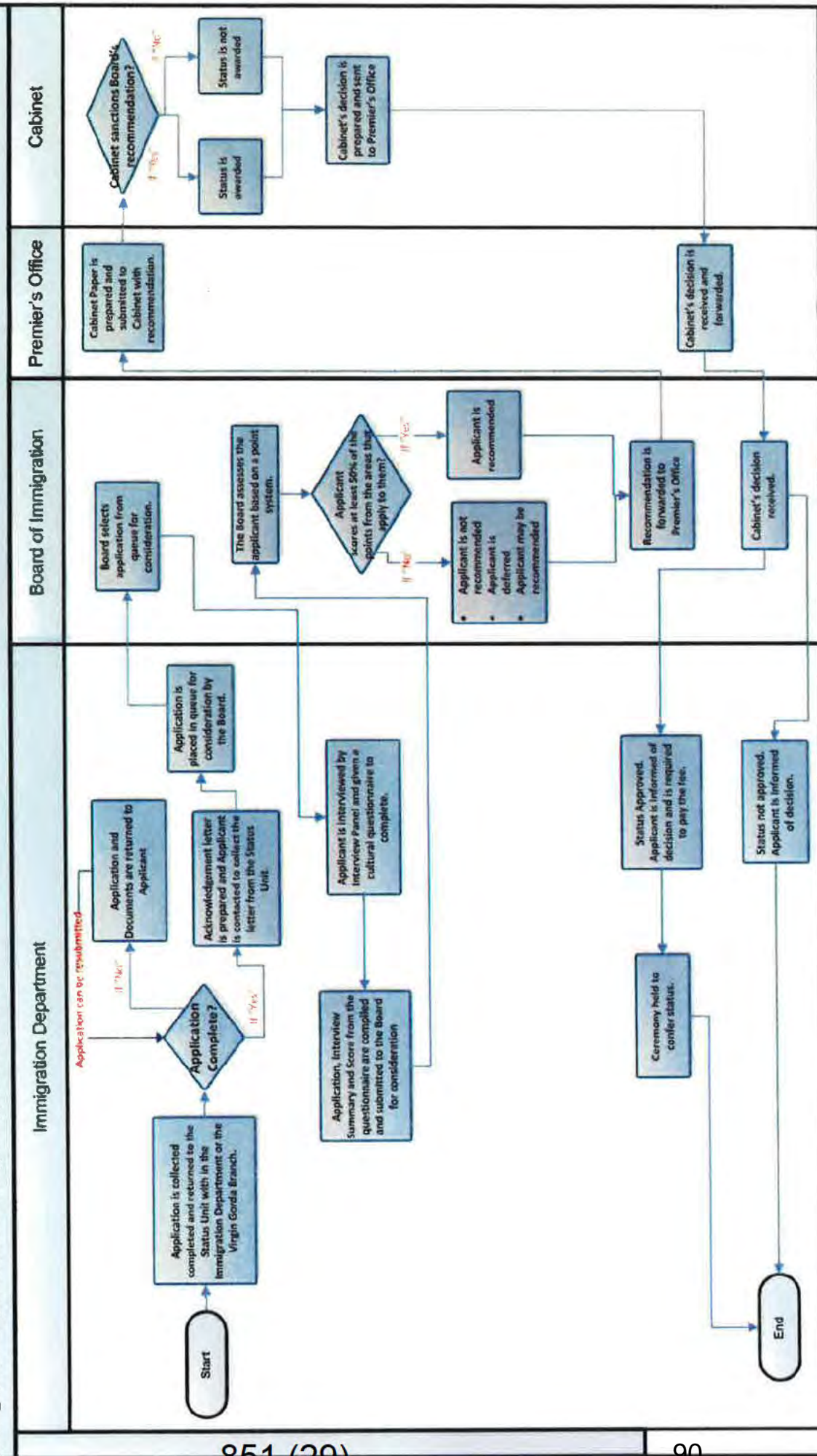
BELONGER STATUS APPLICATION PROCESS

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]
218/12

- 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	

INTERNAL AUDIT DEPARTMENT



FOLLOW-UP AUDIT REVIEW

**Department of Immigration
Belonger Application Process**

January 2014

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INTRODUCTION

The Internal Audit Department completed a follow-up review of the Belonger Application Process pursuant to an audit conducted in June 2012 (*See Appendix A*). In carrying out the follow-up exercise, a meeting was held with the Acting Chief Immigration Officer, the Desk Officer within the Premier's Office responsible for Immigration, and the Secretary for the Board of Immigration, to determine whether the recommendations provided in the internal audit report were implemented and, if so, what effects, if any, have they had on the improvement of the process.

The results of this review found that the Department of Immigration and the Premier's Office have not implemented majority of the recommendations provided. There were nine (9) recommendations provided, however, of these, none were fully implemented and two (2) were partially implemented.

RECOMMENDATION 1: NOT IMPLEMENTED

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 awarding of status.

MANAGEMENT RESPONSE

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

ACTION TAKEN

The Premier's Office has indicated that work has commenced on amending the Immigration and Passport Ordinance Cap 130 in order to bring both the Ordinance and Policy (Memo 367/2004) into alignment. To date, there has been no revision or change to the Ordinance or policy. The conflicting policy document continues to be used as the criteria for eligibility for Belonger status. As a result, the issue continues where individuals desirous of acquiring status are deprived being considered because the policy stipulates a twenty-five (25) years qualifying period whilst the Ordinance states ten (10) years. The use of such criteria continues to be illegal.

A number of challenges were expressed as being the reasons as to why no significant actions have been taken in this regard. These include:

- A change in Government administration,
- A change in personnel within the Status Unit
- A change in Board members

The Premier's Office also indicated that a Policy Officer was recently engaged to assist with revisions to the current policy and Ordinance to remove the inconsistency that exists with the two documents. However, no timeframe was stated to indicate when the anticipated changes are likely to be made.

FOLLOW-UP RECOMMENDATION

As these documents form an integral part in the administration of the process, and the current use of these documents has created confusion in the administering of the process, it is important that every effort be made, to bring both documents (policy and ordinance) in alignment. It is therefore recommended that a realistic timeframe be developed as to when the necessary amendments to the Ordinance and policy will be made. Subsequent to this, active efforts should be made to meet the established timeframe.

RECOMMENDATION2: NOT IMPLEMENTED

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.

MANAGEMENT RESPONSE

Agree/Disagree	AGREE.
Corrective action planned	Take action requires to make policy law.
Anticipated completion date	March 2013
Names(s) of contact person(s) responsible for corrective action	Permanent Secretary, Desk Officer for Immigration

ACTION TAKEN

No action has been taken to ensure that the policy (Memo 367/2004) that is currently utilized in the administration of Belonger Status coincides with the law. The same challenges expressed in reference to recommendation 1 also apply.

FOLLOW-UP RECOMMENDATION

As this recommendation goes hand in hand with recommendation 1, it is therefore recommended that a realistic timeframe be developed as to when amendments to the Ordinance and policy will be made. In addition to the ensuring that both policy and Ordinance complement each other, the Constitution Order should also be considered to ensure that all legislations are in harmony.

RECOMMENDATION 3:PARTIALLY IMPLEMENTED.

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.

MANAGEMENT RESPONSE

Agree/Disagree	AGREE.
Corrective action planned	Hire three (3) persons at clerical level to work in the 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	Human Resources, Premier's Office

ACTION TAKEN

The Belonger Application Process is now a shared process between the Department of Immigration and the Premier's Office. This step was undertaken to bring greater efficiency to the process and to provide additional resources. Two (2) new officers have been added to the process, an Acting Executive Officer and an Acting Senior Administrative Officer, along with the Desk Officer for Immigration at the Premier's Office. However, the initial officer, the Senior Executive Officer, no longer works with the Status Unit.

The Department of Immigration has expressed that in general they have encountered challenges in securing candidates to fill vacant clerical positions within the Department. Contributing factors include; the sensitive nature of the work done in the Department and a core quality that candidates should possess which is confidentiality, as this is a necessity for any officer hired to work in the Status Unit. As a result, only one officer at the Department is employed in the Status Unit.

Under the current structure an officer within the Premier's Office functions as the Secretary to the Board. In addition, the Office's role includes:

- Receives completed applications from the Department of Immigration,
- Arrange interviews,
- Prepare summary sheets for the Board after applicant screening is completed,
- Prepares minutes of Board Meetings,
- Desk Officer, Premier's Office prepares Cabinet Paper based on Board's recommendations,
- Permanent Secretary reviews Cabinet Paper and approves,
- Cabinet Paper is submitted to the Premier for review and approval,
- Submitted to Cabinet,
- Cabinet reviews and approves, denies or defer,
- Cabinet Office prepares extracts from Cabinet Minutes,
- Premier's Officer receives a copy of the Cabinet extract, and
- Desk Officer, Premier's Office sends a copy of the extract to the Chief Immigration Officer requesting required action

The Department of Immigration's role includes:

- Screening incoming applications,
- Acknowledging applications,
- Once process is completed and status awarded, Cabinet extract is received approving status,
- Status Unit notifies applicants, collects payment, distributes belonger certificates to applicants, and
- Creates Belonger File

FOLLOW-UP RECOMMENDATION

Although this current structure brings some added human resources, it is important that the process controls to monitor the chain of custody of documents be also implemented to assist with monitoring applications under this new structure. In addition, if it is realistic and if the Department's workload allows, cross training of current staff is encouraged to lend to the process the needed resources especially when officers have to take leave.

RECOMMENDATION 4: NOT IMPLEMENTED

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.

MANAGEMENT RESPONSE

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 the 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 Senior Executive Officer, Status Unit

ACTION TAKEN

No action has been taken. Although it was agreed that this will provide a form of monitoring the movement of applications through the process, the 'For Official Use Section Only' continues to not be utilized. No reason was provided as to why this Section is currently not being utilized, however, the concern still remains that the non-utilization of this section removes a number of controls that it aims to ensure is administered within the process:

- A chain of custody which creates a system of responsibility and accountability
- Verification that the requisite authorities have duly conducted their role within the process and that all requisite authorities are aware of the position of each person.
- It provides data for informative purposes to monitor the process flow.

FOLLOW-UP RECOMMENDATION

As no significant controls have been implemented to guide and monitor the process, it is recommended that this section of the application be utilized to provide greater transparency and accountability within the process. The section was implemented when the form was initially created because it was viewed as a necessary component of the process, therefore, it will not only add controls but provide the requisite authorities involved in the process with information that the requisite authority completed their role within the process.

RECOMMENDATION 5: NOT IMPLEMENTED

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.

MANAGEMENT RESPONSE

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

ACTION TAKEN

Due to the number of applications that remain outstanding to be processed; and the inability of the Department of Immigration and Premier's Office in gaining adequate control of the current outstanding applications, (in reducing the amount outstanding), no action has been taken to implement the Public Awareness Campaign. As at the date of this follow-up exercise, approximately three hundred and fifty-five (355) applications remain unprocessed. It was communicated that the implementation of this Campaign had the possibility of creating a further strain on the process, as it had the potential to create an influx of applications which the system could not accommodate. As a result, the decision was made that until significant headway is made with reducing the backlog of applications, no further action in this regard would be taken, as it would prove counter-productive.

It was further stated that when adequate control on outstanding applications has been achieved, the Department and Premier's Office will engage the Director of Communications to begin the process of educating the public about the process. The audit team understands the position taken as it is reasonable. However, once the process is brought under control, that is, outstanding applications are reduced to a reasonable and adequate amount; every effort should be made to implement the Awareness Campaign.

FOLLOW-UP RECOMMENDATION

It is recommended that a timeframe also be developed where over the next five (5) years, the Premier's Office in collaboration with the Department of Immigration actively pursue reducing the number of applications to be processed. When this is achieved, vigorous efforts should be made to educate the Public on the process and any new controls implemented to address the long standing issue of applications being misplaced and persons having to resubmit them. This will assist in creating greater confidence in the Public's eyes of the process, the Department and the Premier's Office.

RECOMMENDATION 6:PARTIALLY IMPLEMENTED

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 within the process.

MANAGEMENT RESPONSE

Agree/Disagree	AGREE.
Corrective action planned	Deputy Chief Immigration Officer to discuss with Department of Information Technology (DOIT).
Anticipated completion date	September 2012
Names(s) of contact person(s) responsible for corrective action	Deputy Chief Immigration Officer

ACTION TAKEN

In the absence of a database to track applications through the process, the Premier's Office has made modifications to the previous spreadsheet that was being utilized and has added two (2) sections which includes an application details section and a decision information section to provide greater efficiency in locating applicant's names and the status of their applications. The use of this modified spreadsheet is in its initial stages as data still has to be entered to bring it to a completed state that is functional to stakeholders.

Further actions to be taken include the option of implementing a database. The Premier's Office in collaboration with the Department of Information Technology, will continue research and possible purchase of a database to assist and improve the function.

FOLLOW-UP RECOMMENDATION

It is recommended that active efforts be made to complete the necessary incomplete entries of the modified spreadsheet. If this is not realistic it is recommended that all information for all applications from 2013 be completed, to provide greater efficiency with providing information those involved and for customers who may request status updates from time to time.

RECOMMENDATION 7: NOT IMPLEMENTED

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.

MANAGEMENT RESPONSE

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	Permanent Secretary, Desk Officer

ACTION TAKEN

No action has been taken in this regard. The Desk Officer within the Premier's Office stated that contact has to be made with the Cabinet Secretary to determine how best to implement this recommendation. No new date was given as to when this will be done.

FOLLOW-UP RECOMMENDATION

As this recommendation has much bearing on the transparency and equity of the decisions made on applications, it is recommended that this effort be undertaken as a collaborative effort with the Cabinet's Secretary's Office to implement this recommendation. It will also allow personnel involved in the process to be better informed on decisions made.

RECOMMENDATION 8:NOTIMPLEMENTED

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.

MANAGEMENT RESPONSE

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.
Anticipated completion date	October 2012
Names(s) of contact person(s) responsible for corrective action	Desk Officer Records Officer, Premier's Office Human Resources Manager, Premier's Office

ACTION TAKEN

Currently files are still housed at the Department of Immigration. However, it was stated that plans have been expressed to move these files to the Premier's Office as the Office has resources to assist with the maintenance and management of applicant files. However, only the applications for Belonger status with supporting documentation are submitted to the Premier's Office.

FOLLOW-UP RECOMMENDATION

In addition to an adequately structured file management system, it is further recommended that application numbers be implemented to assist with the tracking of applications through the process. These numbers should be assigned to each completed application at the inception of the process and the number should be communicated to the applicant in the acknowledgment letters. This will provide a source of reference for both the applicant and the Department and assist in easily locating status information on an application.

RECOMMENDATION 9: NOT AGREED

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.

MANAGEMENT RESPONSE

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	N/A
Names(s) of contact person(s) responsible for corrective action	

ALTERNATIVE ACTION TAKEN

This recommendation was not agreed to and no alternative action plan was provided and the current number of outstanding applications was three hundred and fifty-five (355) applications. Bearing in mind that it was stated that implementing a timeframe was largely dependent on the support systems in place to assist with the process (additional human resources, an adequate file management system, adequate application monitoring systems, a database, etc.) and none of these have been implemented, the current number of outstanding applications continues to be significant and with no clear action plan to reduce the outstanding amount. As the process of awarding of status continues, it is possible that this amount will remain significant or possibly increase, if no clear plan to reduce processing time is implemented.

FOLLOW-UP RECOMMENDATION

As the current amount of applications to be processed remains high, it is once again reiterated that a realistic timeframe to reduce the number of outstanding applications be developed. In addition, seeing that the systems implemented to assist and support the process have direct impact on achieving this, it is recommended that active efforts be made to ensure that necessary changes and improvements are made to bring the necessary controls and efficiency that is required to the process.

ADDITIONAL MATTERS

A sample of thirty eight (38) persons was selected to review the process flow of their applications. In 2011, a list of two hundred and twenty-four (224) persons, on Memos 430/2011, 139/2011 and Minutes 2916 and 2915, was produced for persons whose Belonger status was approved illegally. Six (6) persons identified on this list also formed part of the current sample.

The review revealed that the six (6) applicants, who although initially were awarded Belonger status, were required to go through the established process as the status initially approved was done contrary to the legally established process. They were subsequently awarded status on the recommendation of the Board and the re-approval of Cabinet. It was also discovered that, at the time status was initially awarded in 2011, all of the applicants had an application submitted to the Department of Immigration for consideration. However, they were never interviewed or subject to any other criteria of the established process. It is uncertain if all persons appearing on the list of persons who received status contrary to the established process have had to go through the Board to receive their status.

Documents reviewed at the Premier's Office indicated that the decision to have persons who were awarded status contrary to the process go through the established process was done based on the advice from the Attorney General's Chambers (memorandum dated November 14, 2012). Although this memorandum spoke to the awarding of Residency Status without consulting the Board of Immigration, the same applies to Belonger Status. As also indicated in the advice provided, if persons appearing on this list were in fact given status without any consideration or evaluation by the Board, their statuses can be questionable and the process can be subject to review, as the manner/process through which the status was awarded was contrary to the relevant legislation. Additionally, where legislation stipulates that one decision making body is to consult with another prior to making a decision or conducting an act, there are reasons why such provisions or guidelines are made. Provisions such as the appointment of boards or committees are to provide added procedural safeguards to aid decision makers. When decisions are made outside of such established safeguards, they increase the likelihood for the decisions to be questionable and possibly subject to legal review.

The remaining applicants that comprised the sample reviewed were found to have been awarded status as outlined by the established process. No instances were identified whereby, names were added to the list that was recommended by the Board, as all names reviewed were recommended by the Board, approved by Cabinet and subsequently awarded status.

CONCLUSION

The Belonger Application Process has not undergone any significant change since the submission of the audit report in 2012. Therefore, much of the issues expressed in that report remain unresolved and therefore, most of the risks expressed in that report remains unaddressed.

It is important that in the administering of processes, administrators are clear in what their roles and functions entail. In addition, clear guidelines are necessary to ensure consistency and transparency in the process. Failure to ensure that the requisite legislation and policies utilized, in the administration of the Belonger Application Process are amended or revised, along with the implementation of other recommendations provided will result in continued inefficiencies and ineffectiveness within the process. Therefore, it is essential that timeframes be determined for the revision of these legislations to create customer satisfaction and confidence within the service provided.

POINT SYSTEM

Belonger Status & Residence Status Assessment

BVI Immigration Department Belonger Status/Residence Assessment Form	
FACTOR	POINTS
1. <u>Employment Status</u> a. Full time b. Part time c. None d. Retiree (10 pts)	(Maximum 20)
Explanation (i) Persons employed in the Territory who can demonstrate tax and social security contributions are considered eligible for maximum points. <ul style="list-style-type: none"> - to see if a person is current with tax depending on the nature of employment - continuous employment to be considered - continuous full time employment with tax and social security contributions to attract maximum points; continuous part time employment with reasonable explanation for such part time employment and consistence tax and social security contributions to also attract maximum points - points to be deducted for (i) failure to make any tax and social security contributions while in employment or inconsistency in making such payments ; (ii) lack of continuous employment with no reasonable explanation - no points for failure to secure employment with no reasonable explanation 	

2. <u>Knowledge/Experience</u> TO CONSIDER: a. Number of years of experience in field b. Degree programme qualifications c. Professional/Postgraduate qualifications d. Skilled tradesmen e. Employment references	(Maximum 20)
Explanation (i) The points given for experience are calculated based on one point for every year worked in the job. (ii) Points will be allocated for technical qualifications or certificates awarded to the applicant by any internationally or nationally recognized institution or association or other body recognized in the applicant's field of expertise or trade. An applicant must have two years of experience in his job to qualify. (iii) An applicant will gain points for a university degree requiring at least three years of full-time study. (iv) Maximum points will be granted for professional or postgraduate qualifications (i) Skilled tradesmen/women to be allotted points on basis of number of years in trade and references	

3. <u>Financial Assessment</u> a. Investment in property in the Virgin Islands b. Investment in a local company c. Savings (local) d. Other	(Maximum 20) (5 points) (5 points) (5 points) (5 points)
Explanation Looking at a persons financial position in the BVI	

<p>4. <u>Funds and Salary</u></p> <p>a. Evidence of salary</p> <p>b. Evidence of other income</p> <p>c. Other means of financial support</p>	(Maximum 30)
<p>Explanation</p> <p>TO CONSIDER:</p> <p>(i) Size of family</p> <p>(ii) Income</p> <p>(iii) Expenses</p> <p>To compare debt to income ratio to ascertain ability to afford self and dependent family in BVI</p>	

<p>5. Contributions to the Local Community</p> <p>For the purpose of example only</p> <p>a. Training and employment of Virgin Islanders</p> <p>b. Participation in a youth programme</p> <p>c. Participation in a counseling or drug programme</p> <p>d. Participation in the rehabilitation etc. of offenders</p> <p>e. Participation in a sports programme</p> <p>f. Participation in an arts programme</p> <p>g. Participation in a service club</p> <p>h. Participation in a church or other local society</p> <p>i. Participation in a social club</p> <p>j. Other (4)</p>	(Maximum 40)
<p>Explanation</p> <p>(i) An applicant's ability to settle and integrate successfully into the Virgin Islands is assessed by reference to such qualities as adaptability, motivation, involvement in the community and initiative.</p> <p>(ii) Points to be awarded on the basis of the number of community programmes etc. applicant is involved in; and also to consider the number of years and what they have done.</p>	
<p>6. <u>Assimilation</u></p> <p>Not a part of the BVI community (this should be points deducted)</p>	
<p>7. <u>Cultural/Knowledge</u></p> <p>Written test is worth 2 points each.</p>	(Maximum 20)

8. General

The Board may take into consideration the desirability of granting permanent residence to applicants with different backgrounds and from different geographical areas in order to maintain a suitable balance in the social and economic life of the country.

Explanation

In exercising this discretion the Board may award points to applicants from countries whose nationals hold less than twenty percent of the total number of work permits in effect at that time based on the Department of Labour statistical information as follows:

Applicant is from a country whose nations holds:

- | | |
|----------------------------------------------------------|-----------|
| (a) 16-19% of the total number of work permits in force: | 5 points |
| (b) 11-15% of the total number of work permits in force: | 10 points |
| (c) 6 -10% of the total number of work permits in force: | 15 points |
| (d) < 5% of the total number of work permits in force: | 20 points |

A. 5 points		B. 10 points		C. 15 points		D. 20 points
Guyana	985	UK	563	St. Lucia	196	Other
Jamaica	913	USA	457	Phillipines	169	
Dom. Rep.	779	Dominica	366	St. Kitts	106	
St. Vincent	757	Trinidad/Tobago	215	South Africa	70	
		Grenada	204	Haiti	61	
				Puerto Rico	50	

9. BVI Police Record

(Deductible Points) see schedule

10. Surveillance

Total points available 150

Deductible points for failure to assimilate and also for criminal convictions

Applicant should obtain at least 50% of points from areas which are applicable to them for application to be considered further.

DEDUCTIBLE POINTS
SCHEDULE OF OFFENCES

<u>Nature of Offence</u>	<u>Points</u>
Immigration Offences	0 - 30
Customs Offences	0 – 20
Homicide and Other Offences Against the Person	Refer to Chief Immigration Officer
Drug Offence	Refer to Chief Immigration Officer
Offences Against Government and Public Officer	0 – 30
Offences Against the Administration of Lawful Authority	0 – 20
Offences Relating to the Administration of Justice	0 – 20
Offences Relating to Religion	0 – 20
Sexual Offences	0 – 30
Offences Relating to Marriage	0 – 20
Offences Relating to Property	0 – 20
Forgery, Counterfeiting, etc	0 – 30
Criminal Damage and Similar Offences	0 – 20
Nuisances and Other Offences Against the Public	0 – 20
Other Offences	0 – 30

Applications for Certificates of Belonger Status - (September 2018 - April 2019 Recommendations)

Signed

· 24 June 2019 · MNRLI · Ms. Nadia Demming-Hodge · Memo No. 244/2019

Background Information

1) Section 16 of the Immigration and Passport Act (Cap 130) (revised) provides that after consultation with the Board of Immigration, Cabinet may, upon application being made in the manner prescribed, grant a Certificate that a person belongs to the Territory for the purposes of the Ordinance. The provisions of the Ordinance detail the criteria which to be satisfied before a certificate that someone belongs to the Territory can be issued. Further Immigration policy guidelines (**see Appendix A**), which have been developed to assist the Board when processing applications, require the Board to consider other relevant data in relation to applicants as part of the normal screening process; which includes an interview and evaluation based on objective criteria; such as: Employment Status, Knowledge/Experience, Financial Assessment, Contributions to Local Community, Police Record, etc

2) The Board of Immigration in their meetings of 27th September, 18th October, 15th November, 2018 and 10th January, 7th February, 21st March and 25th April, 2019 considered a total of two hundred and six (206) applications for Certificates of Belonger Status. Recommendations were made after it was determined that they have met the requirements of Section 16 of the Ordinance along with the established policy guidelines and evaluation system of the Board of Immigration (**see Appendices B, C, D and E**). **Appendix F** contains excerpts from the minutes of

the Board of Immigration meetings held on 27th September, 18th October, 15th November, 2018 and 10th January, 7th February, 21st March, and 25th April, 2019.

3) Forty-two (42) applicants were recommended by the Board of Immigration in accordance with Section 16 (6) of the Immigration and Passport Act (revised). Five (5) applicants scored below the minimum points attainable in the Point System; primarily due to lack of employment at the time of the interview and place of origin. The spouses of these applicants, who are Belongers/BVIslanders supported these applications.

4) Two (2) applicants were recommended by the Board in accordance with Section 16 (7) of the Immigration and Passport Act. There are [REDACTED]

[REDACTED] is the spouse of the [REDACTED]

[REDACTED] While [REDACTED]

[REDACTED] a BVIlander [REDACTED]

[REDACTED] She scored below the minimum points attainable in the Point System; primarily due to lack of employment and place of origin. Based on the information provided at the interview, the Board concluded that both applicants have met the requirements for a Certificate of Belonger Status in accordance with Section 16 (7) of the Immigration and Passport Act and were therefore recommended.

5) Applicants [REDACTED] did not meet the requirements in accordance with Section 16 (6) and therefore, were **not recommended** by the Board. Based on information received in the interview process, [REDACTED]

[REDACTED]

[REDACTED]

6) Recommendations were also made in relation to one hundred and sixty (160) applicants in accordance with Section 16 (3) of the Immigration and Passport Act (as amended). It was noted that seven (7) persons scored below the minimum points attainable in the Point System. This was primarily due to two (2) students at the time were attending university and therefore are not employed. There were also other persons who were not employed; particularly due to businesses affected after the storms of 2017. They all hold Certificates of Residence and have contributed to the Territory over the years.

7) The Cabinet paper has been updated as per the instructions of the Attorney General's Chambers.

Purpose

8) The purpose of this Cabinet Paper is to grant Belonger and Residence Status' to persons are qualified under the different categories as stipulated by the Immigration and Passport Act.

Cross-Ministry Consultation

9) The nature of this paper does not require cross-ministry consultation.

Financial Implications

10) The Government will receive a fee of \$510 for each applicant that will assist in setting off the associated processing cost. In addition, the applicants would have greater access to participate fully in economic activities such as home ownership and business investment opportunities. This has the potential to

outweigh any potential loss of revenue from work permit fees and other higher rates that are applied to non-belonger fees for various services that are charged by government.

Legal Implications

11) As requested, we have reviewed the draft Cabinet Paper relative to the matter at caption.

12) Having reviewed the draft Paper we advise that we have discerned no adverse legal implications which would arise if Cabinet is minded to decide in accordance with the Decision Sought, save in relation to the following:

13) **1. No. 15 of Paragraph 2 of the Decision Sought:**

14) It does not appear that the recommendation in relation to [REDACTED] [REDACTED] can be supported by any of the provisions of section 16 of the Immigration and Passport Act (Cap. 131), as amended ("the Act"). We, therefore, recommend deleting [REDACTED] from the list of names currently being forwarded to Cabinet for approval.

15) **2. Paragraph 3 of the Decision Sought:**

16) The recommendation in relation to [REDACTED] although made pursuant to section 16(7) of the Act appears not to be supported by that provision. Section 16(7) deals with belonger spouses who die prior to the period of 5 years' of living together in the Territory as husband and wife, but after a period of at least 2 ½ years.

17) [REDACTED] does not fall within that category as he lived in the Territory for a period of [REDACTED] [REDACTED] In the circumstances, we are of the considered view that [REDACTED] application may instead be considered and

approved by Cabinet pursuant to section 16(4), if Cabinet is so minded. Kindly amend the draft Paper to seek Cabinet approval on the basis of section 16(4) instead.

18) Please revert to Chambers if you require any further assistance.

Communication Strategy

19) Once Cabinet has approved the decision sought the Immigration Department will make contact with the persons receiving approval.

Conclusion

20) Members are asked to consider and concur with the decision sought.

Decision Sought

Cabinet is invited to:

- a. review the recommendations of the Board of Immigration in respect of applicants for Certificates of Belonger Status;
- b. accept the recommendations of the Board of Immigration to grant Certificates of Belonger Status to the following forty-one (41) persons who, in accordance with section 16 (6) of the Immigration and Passport Act (revised) are the spouses of Belongers, and who have been living together with their spouses within the Territory for a period not less than five (5) years:

[REDACTED]


[REDACTED]


[REDACTED]

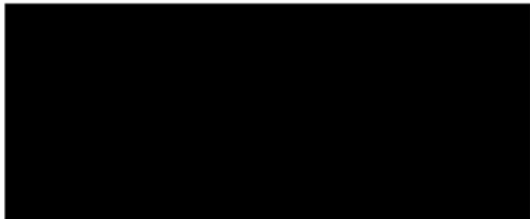


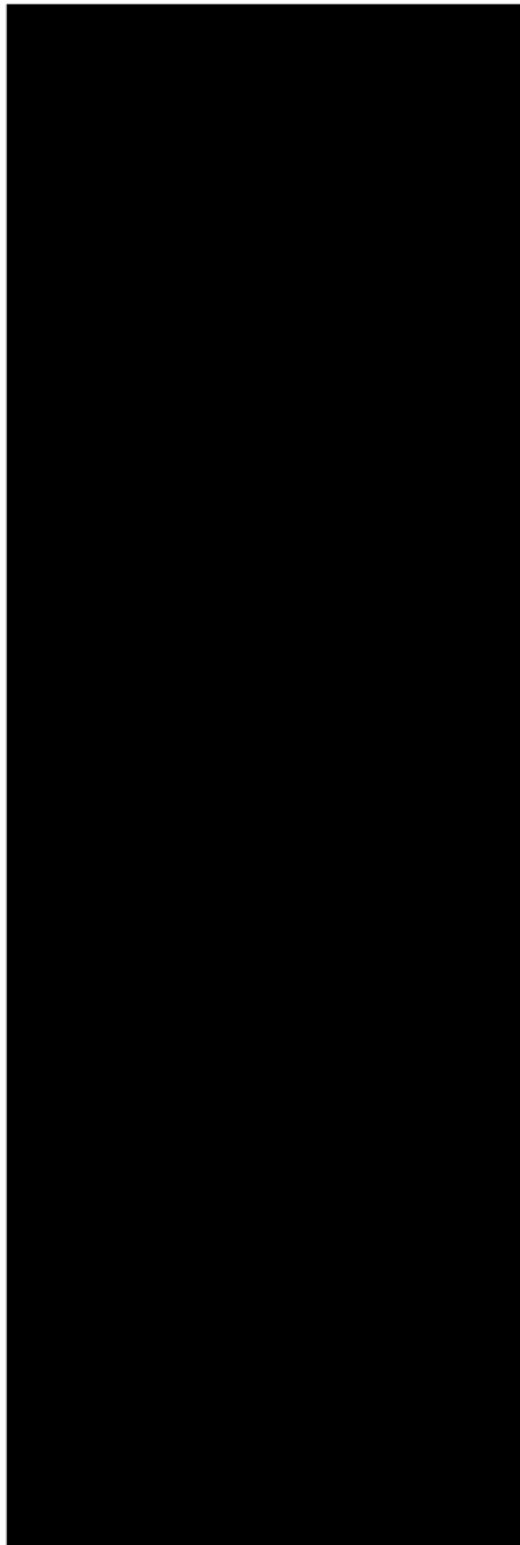


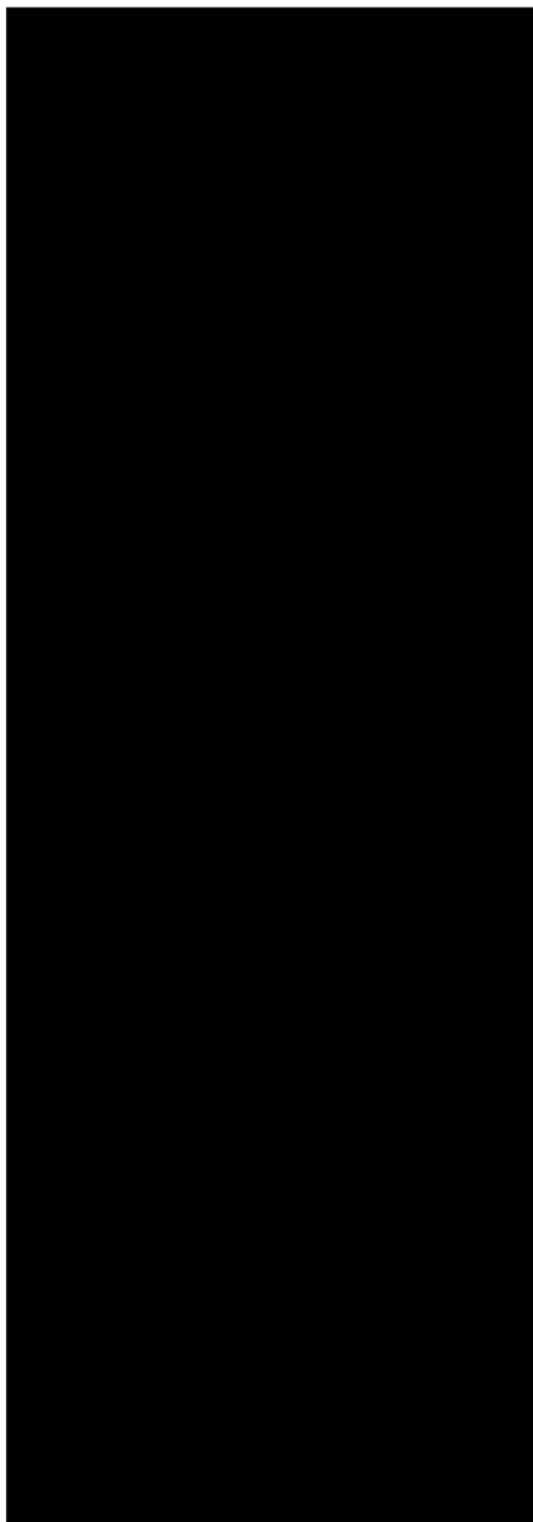
- c. accept the recommendation of the Board of Immigration to grant a Certificate of Belonger Status to the following person who in accordance with section 16 (7) of the Immigration and Passport Act have met the requirements:

- 
- d. accept the recommendation of the Board of Immigration to grant a Certificate of Belonger Status to the following person who in accordance with section 16 (4) of the Immigration and Passport Act have met the requirements:

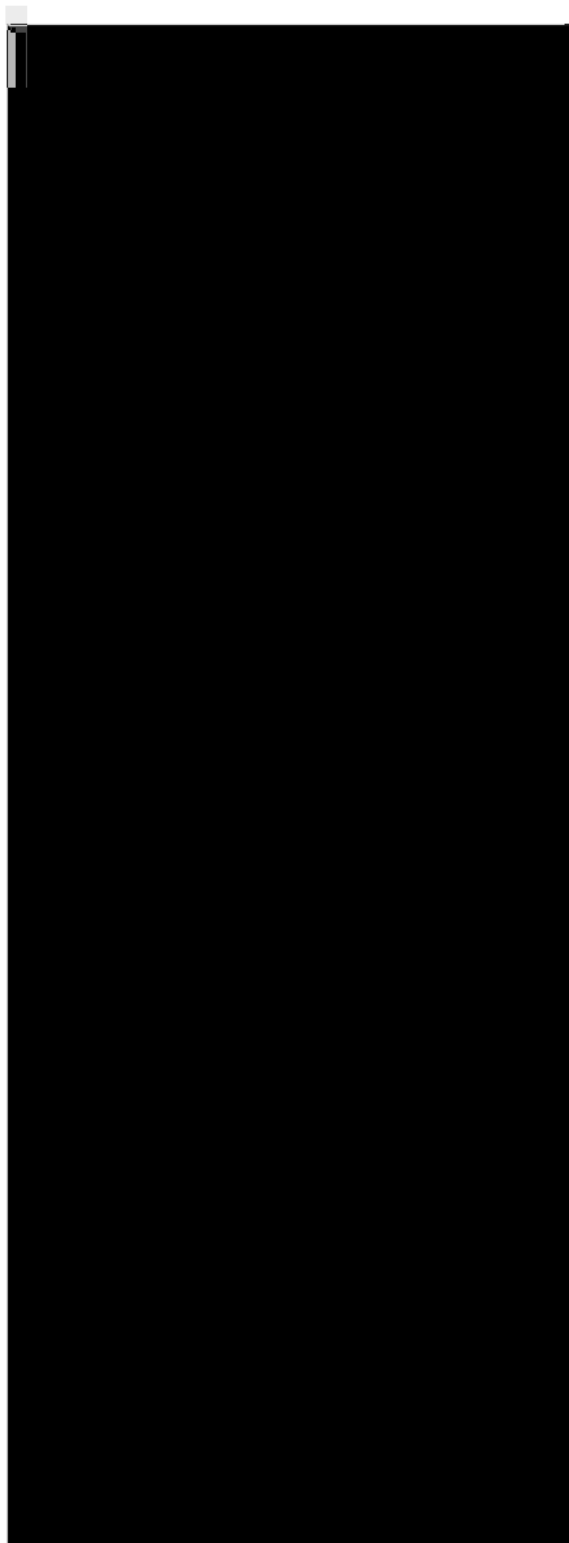
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- e. accept the recommendations of the Board of Immigration to not grant a Certificate of Belonger Status on the basis of marriage, in accordance with section 16 (6) of the Immigration and Passport Act (as amended) to the following persons:

- 
- f. accept the recommendations of the Board of Immigration to grant Certificates of Belonger Status to the following one hundred and sixty (160) applicants, who, in the opinion of the Board, have met each of the legal requirements of Section 16 (3) of the Immigration and Passport Act (revised):

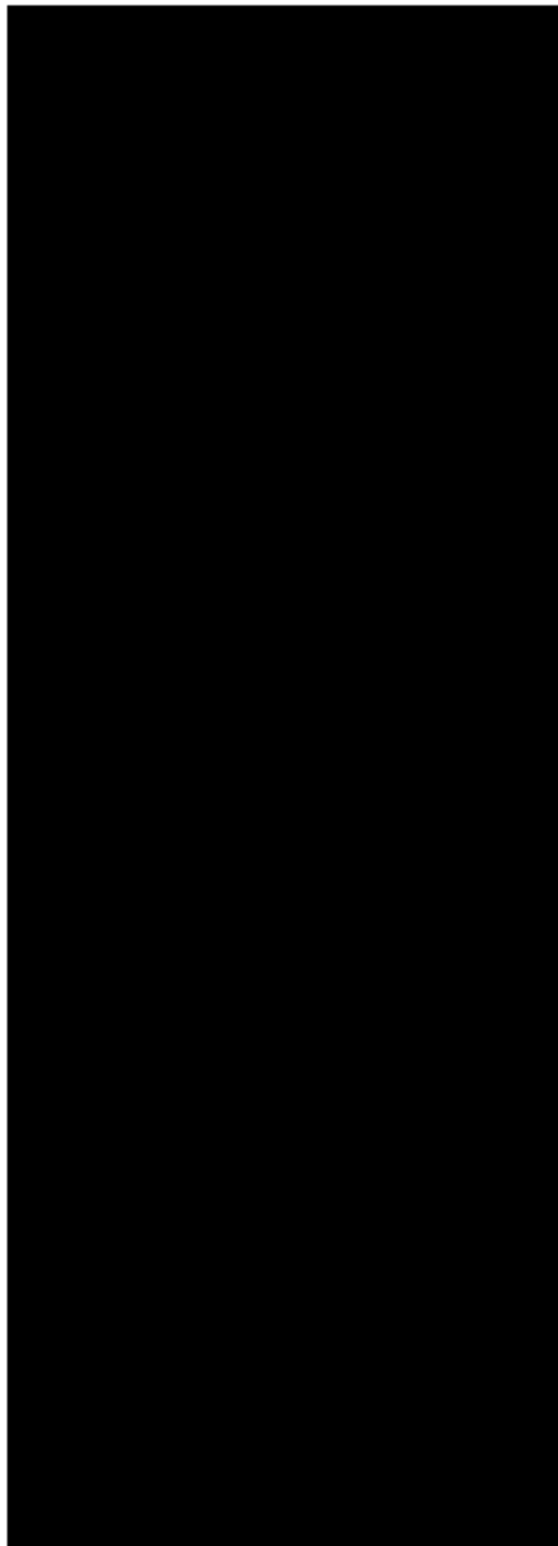


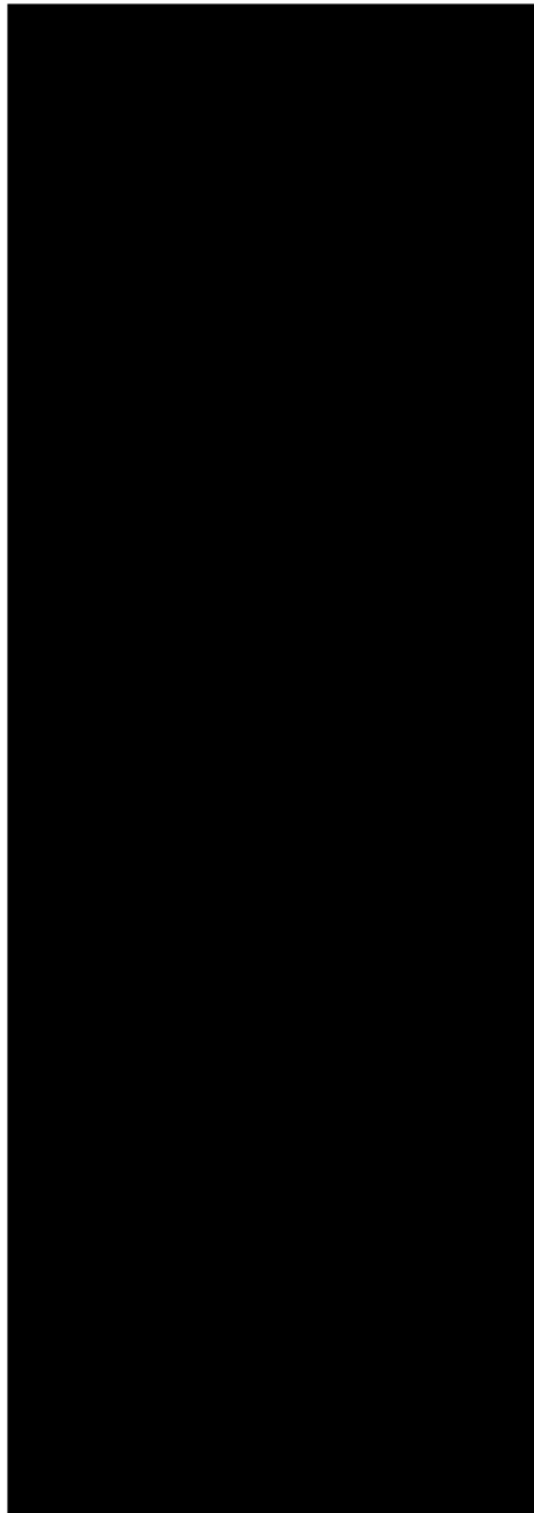


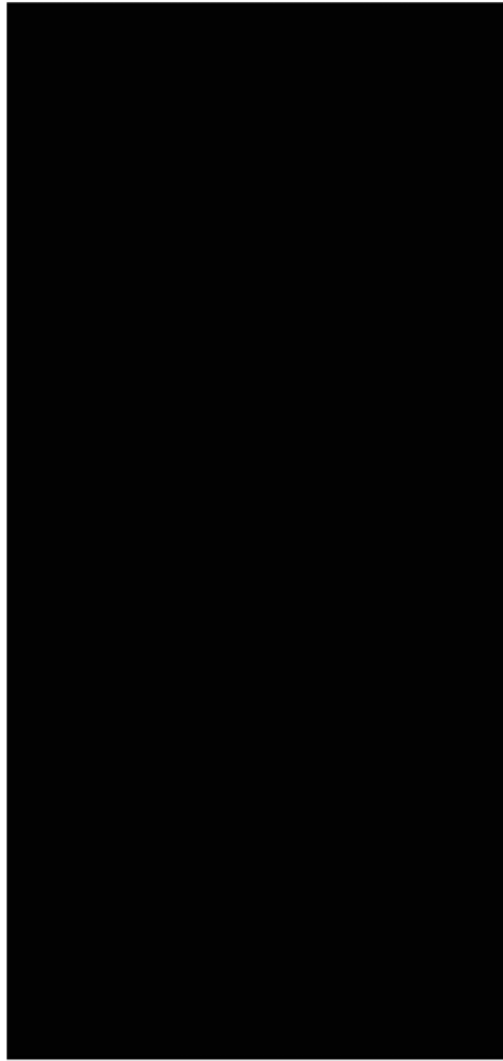












- g. direct that the Immigration Department communicates Cabinet's decision to the respective applicants in a timely manner; and
- h. decide that an expedited extract be issued to allow the decision of the Cabinet to be acted upon before the confirmation of the Minutes.

Recipients: Financial Secretary, MOF; Attorney General, AGC;

Hon. Vincent Wheatley
Minister for Natural
Resources, Labour and
Immigration
29 July 2019

Applications for Belonger Status - July and October 2019; and February 2020

Signed

· 13 March 2020 · MNRLI · File: ADM 1/112 · Ms. Nadia Demming-Hodge
· Memo No. 268/2020

Background Information

1) Section 16 of the Immigration and Passport (Amendment) Act (Cap 130) provides that after consultation with the Board of Immigration, the Cabinet may, upon application being made in the manner prescribed, grant a Certificate that a person belongs to the Territory. The provisions of the Act details the criteria to be satisfied before a certificate representing that someone belongs to the Territory, can be issued. Furthermore, the Immigration Policy Guidelines (**see Appendix A**), which have been developed to assist the Board when processing applications, require the Board to consider other relevant data in relation to applicants, as a part of the normal screening process. This includes an interview and evaluation based on objective criteria, such as: Employment Status, Knowledge/Experience, Financial Assessment, Contributions to Local Community, Police Record, among other areas.

2) The Board of Immigration in their meetings of 23rd July and 29th October, 2019, and 7th and 18th February, 2020, considered a total of fifty-three (53) applications for Certificates of Belonger Status. Recommendations were made after it was determined that they have met the requirements of Section 16 of the Ordinance, the established policy guidelines and evaluation system of the Board of Immigration. **Appendix B** contains excerpts from the minutes of the Board of Immigration meetings held on 23rd July and 29th October, 2019, and 7th and 18th February, 2020.

3) Of the fifty-three (53) applicants, fifty (50) were recommended by the Board of Immigration in accordance with Section 16(6) of the Immigration and Passport (Amendment) Act. Profiles of each applicant is attached at **Appendix C**. It was noted however, that nine (9) applicants scored below the minimum points attainable under the Boards point system. These low scores were primarily due to the lack of employment because of retirement or the decision to be homemakers. The spouses of all nine (9) applicants have given their full support for the grant of Belonger Status, and as such, the Board has recommended for their approval by Cabinet.

4) The remaining three (3) applicants who were holders of Certificates of Residence and have resided in the Territory over twenty-five (25) years were recommended by the Board in accordance with Section 16(3) of the Immigration and Passport Amendment Act, and profiles of each applicant is attached at **Appendix D**.

Purpose

5) To allow for persons who are married to BVI Islanders and have resided in the BVI with them for five (5) consecutive years, and persons who have resided within the Territory for a period exceeding twenty-five (25) years consecutively, to be granted Belonger Status.

Cross-Ministry Consultation

6) Due to the nature of this Paper, Cross-Ministry consultation is not needed.

Financial Implications

7) The paper should have mentioned the amount of the application fee received from each applicant.

8) Furthermore, the applicants will have greater access to participate fully in economic activities such as home ownership and business investment opportunities etc which will impact the economy of the Virgin Islands.

Legal Implications

9) We have reviewed the draft Paper and have discerned no adverse legal implications which would arise if Cabinet is minded to decide in accordance with the decision sought.

Communication Strategy

10) All applicants for Belonger Status will be notified of their approval and will be presented with a certificate and card following Cabinet's approval.

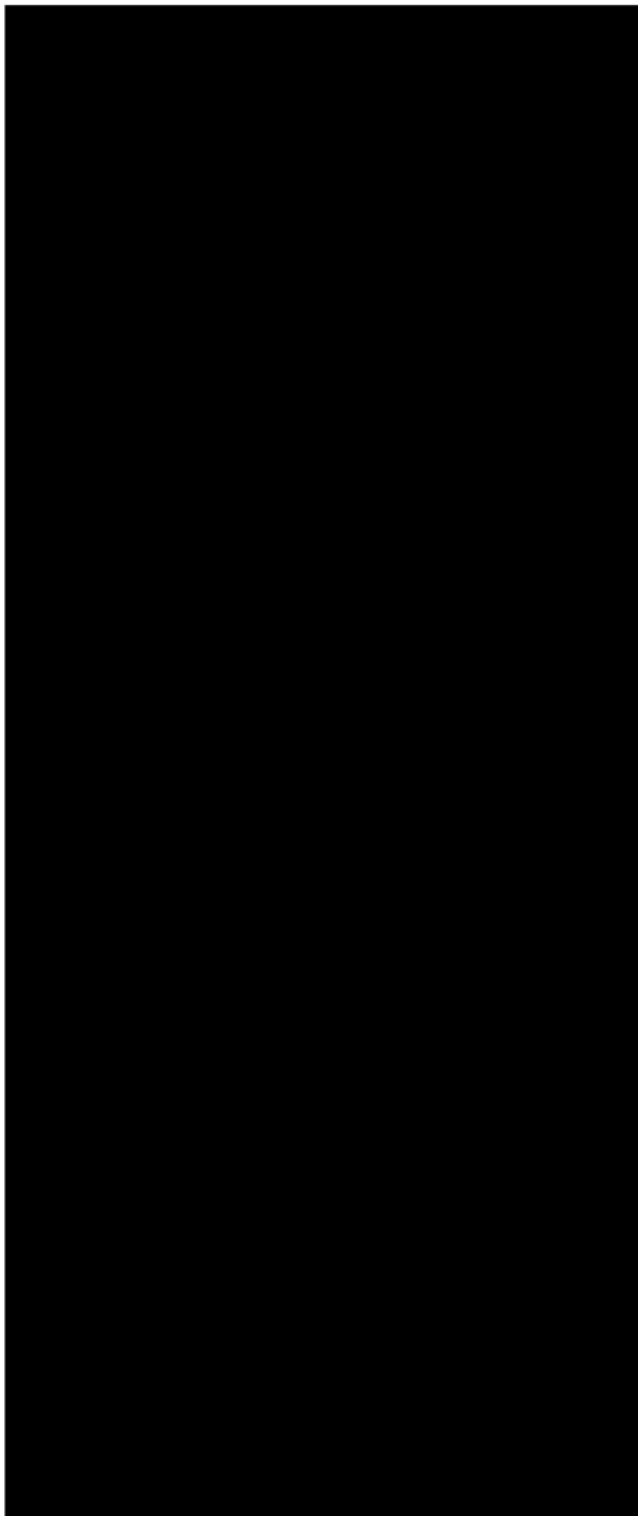
Conclusion

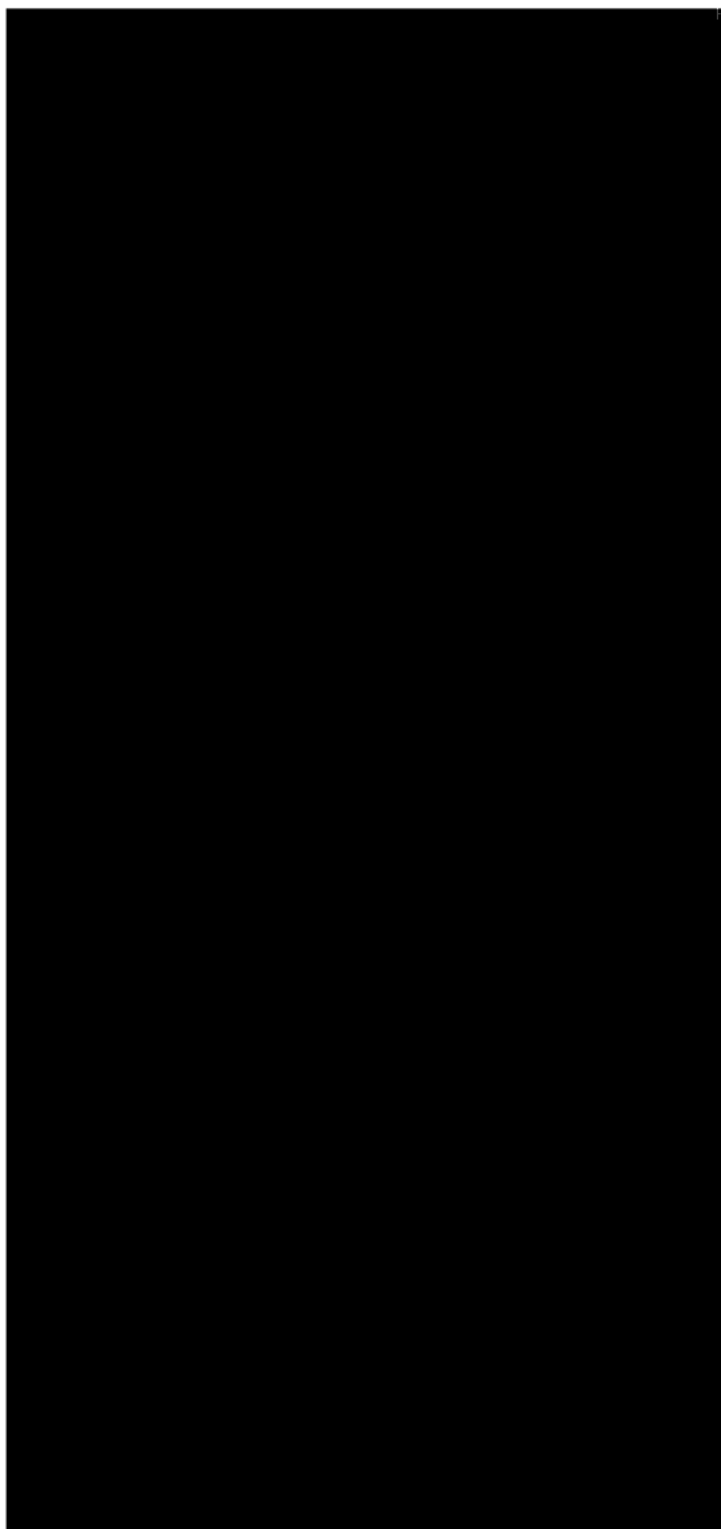
11) Members are asked to consider and concur with the decision sought.

Decision Sought

Cabinet is invited to:

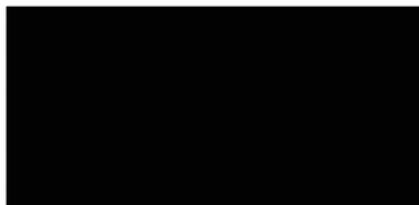
- a. review the recommendations of the Board of Immigration in respect of applicants for Certificates of Belonger Status;
- b. accept the recommendations of the Board of Immigration to grant Certificates of Belonger Status to the following forty-eight (48) persons who, in accordance with section 16(6) of the Immigration and Passport (Amendment) Act are the spouses of belongers, and who have been living together with their spouses within the Territory for a period not less than five (5) years consecutively:







- c. accept the recommendations of the Board of Immigration to grant Certificates of Belonger Status to the following three (3) applicants, who, in the opinion of the Board, have met each of the legal requirements of Section 16(3) of the Immigration and Passport (Amendment) Act:



- d. direct that the Immigration Department communicates Cabinet's decision to the respective applicants in a timely manner;
- e. decide that a Ceremony be held to confer Belonger Status on the approved applicants; and
- f. decide that an expedited extract be issued to allow the decision of the Cabinet to be acted upon before the confirmation of the Minutes.

Recipients: Financial Secretary, MOF; Attorney General, AGC;

Hon. Vincent Wheatley
Minister for Natural
Resources, Labour and
Immigration
15 July 2020

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MANAGEMENT'S RESPONSE

1.0 EXECUTIVE SUMMARY

- 1.1 The method of assigning work permit numbers is antiquated, which has lead to a significant number of duplicates.
- 1.2 Senior positions within the Employment Services Unit of the department have remained vacant for extended periods which has contributed to some of the operational deficiencies within the unit and the department.
- 1.3 The department has been without a Deputy Commissioner in excess of a year which has a contributory effect on the functioning of the department.
- 1.4 The work permit applications are inadequate in providing sufficient information on which informed decisions can be made. As such, it was difficult to discern on what basis decisions for approval or disapproval are made.
- 1.5 Investigations carried out on work permit applications are scant and provides little additional information to substantiate the validity and legitimacy of an application.
- 1.6 The department lacks the necessary facilities (vacancies database, validation mechanism, etc.) to ensure that belongers are not disenfranchised throughout the process.
- 1.7 The JD Edwards database is poorly maintained and contains incorrect data, thus producing inaccurate historical data and statistics.
- 1.8 The data entry process lacks adequate validation and oversight by management to ensure a reasonable level of accuracy for inputted data.
- 1.9 **Multiple users of the ID Works system uses a single username and password, although the system is capable of multiple user profiles. Since its implementation in 2007 the password for the ID Works System has been changed only once.**
- 1.10 As a result of the single user setup both the preventative and detective controls within the systems has been severely compromised.
- 1.11 No reconciliation is done between the JDE and ID Works system.
- 1.12 The location of the ID Works system compromises the physical security of the system as it is easily accessible to both employees and clients alike.

2.0 INTRODUCTION

- 2.1 The Labour Department is charged with promoting, monitoring and regulating employer – employee relationships within the Virgin Islands (UK). Economic growth over the past two (2) decades has far surpassed the indigenous labour supply to sustain such growth. Consequently, the Government, through the Department of Labour, has employed the strategy of employing a “guest worker” programme (expatriate labour) to meet the current labour demands. The process of employing guest workers is commonly known as the Work Permit Process.

3.0 AUDIT TYPE

- 3.1 Operational

4.0 AUDIT SCOPE

- 4.1 The scope of the audit covered permit issuance for the years 2007 and 2008.
- 4.2 The audit also included a review of the security of the ID Works systems implemented by the department for the issuance of Work Permit Identification Cards.

5.0 AUDIT OBJECTIVE

- 5.1 To give assurance that work permit issuance is in compliance with the department's regulations.
- 5.2 To give assurance as to the adequacy of the controls for the work permit identification card system.

6.0 AUDIT CRITERIA

- 6.1 Interviews with pertinent staff
- 6.2 Work Permit applications for the years 2007 and 2008
- 6.3 Documentation for ID Works software
- 6.4 Policies and procedures for the processing of work permit applications

7.0 FACTS AND FINDINGS

Work Permit Processing

- 7.1 Work permit applications are outdated and do not provide adequate/sufficient information on which a decision can be made. As a result, based on the reports, processing officers are required to contact the employer to collect information that can be collected on a revised application, thus possibly reducing the processing time.
- 7.2 The work permit process lacks standards and criterions on which decisions can be made. As such, it lacks transparency in the decision making process.
- 7.3 The work permit process is paper intensive and as a result a large amount of the department's resources, physical and financial, are dedicated to servicing this facet. The department provides applications free of charge, which requires large amounts of paper to fulfill the current demand, thus necessitating great financial outlays. In addition, the department's physical space is seriously depleted due to the storage requirements.
- 7.4 In submitting an application, employers are not required to submit an applicant's qualifications or detail of work experience, thus requiring investigations. Information collected during an investigation varies from application to application and from processing officer to processing officer. There is no guidance on the type of information required by the Commissioner on which her decision will be made.
- 7.5 As a requirement for submitting a work permit application, employers are required to provide "written details about belongers who applied" for the position. However, the audit team found that this requirement is not regularly adhered to and processing officers must call employers to fulfill this requirement. Furthermore, the department has no way of verifying such information and usually accepts the employer's response at face value. Such lack of a verification process could possibly lead to belongers being disenfranchised for such positions.
- 7.6 The department lacks an adequate communication mechanism to keep the public informed throughout the process, as a result the department is inundated with telephone calls and visits seeking information as to the status of applications.
- 7.7 Through interviews, it was discovered that as part of the investigative process, the Labour Department conducts inquiries with the Inland Revenue Department and Social Security Board to ensure that employers are up to date with their contributions. We commend the department's efforts to work collaboratively with other agencies, however, the practice is somewhat burdensome and time consuming. Furthermore, the

burden of such payments falls squarely on the employer and the possible withholding of a work permit application for nonpayment of such withholding not only penalizes the employer, but also unfairly places the employee in a precarious position with the Immigration Department.

- 7.8 The audit found that although the department collaborates with other agencies of government, limited collaboration is done with the Department of Immigration in the actual processing of application, a department to which the work permit process is inextricably linked. In fully understanding the process it was revealed that the Labour Commissioner can approve a work permit and the Chief Immigration Officer can deny the applicant entry to the Territory which in essence renders the Labour Commissioner's decision void. Such mode of operating can be extremely counterproductive to the department, as much time and energy has been exerted in the processing of the application.
- 7.9 The process of assigning permit numbers within the department is antiquated with no preventative or detective controls in place to safeguard against duplication. Consequently, multiple applications have been assigned the same work permit number. The department is aware of the problem and has sought to resolve it by identifying duplicates with an alphanumeric designation; however, such format is not supported by the JDE database, which compounds the problem. As a result, identification cards are also issued to different applicants containing the same permit number. Such occurrences could possibly lead to identification cards being mistaken as fraudulent as well as negating the detection of actual fraudulent cards.
- 7.10 The department utilizes a module in the JD Edwards Software to manage work permit applications. However, this system has proven to be inadequate and inefficient in executing the required function. In addition, the system is poorly maintained/updated and validation of the information is non-existent. As a result, the information contained in the database is deficient, thus producing erroneous historical records and statistics.
- 7.11 Due to the non-connectivity between the JDE and the ID works systems, information must be entered independently in each system. As a result, information between the two (2) systems differs due to data entry errors and the lack of a verification process to ensure that information is validated.
- 7.12 Again, through interviews, it was highlighted that for new and transfer work permits the Labour Commissioner determines which permits are assigned to processing officers. The audit team found this practice to be time consuming and inefficient for the following reasons:

- 7.12.1 The process may be stalled if the Commissioner is unavailable to assign permits to officers.
- 7.12.2 As the person responsible for developing strategies for moving the department forward and in the absences of a Deputy Commissioner to assist in the management of the functions of the department, we find that this is a very inefficient use of valuable time.
- 7.13 The positions of Senior Labour Officer – Work Permits and Senior Labour Officer - Placement have remained vacant for more than two (2) years, which has significantly impacted the functioning of the Employment Services Unit of the Department. As a result, the Employment Services Unit has to be somewhat directly managed by the Commissioner with some assistance from the Labour Officers within the Unit. This situation can also account for some of the procedural and operational deficiencies that have been occurring within the Unit due to the lack of oversight.
- 7.14 The position of Deputy Labour Commissioner has remained vacant for more than a year, which may be contributory to some of the deficiency plaguing the department.
- 7.15 Determination of approval or disapproval of a work permit application is somewhat subjective, in that there appears to be no real criteria which must be satisfied on which the decision is to be made. In reviewing approved applications the audit team found that:
- 7.15.1 Applications for renewals are somewhat automatically approved with little scrutiny or with little consideration as to whether a “belonger” is available to fill the position, thus disenfranchising belongers.
- 7.15.2 New applications are given scanty investigations which add very little value to the decision making process. Evidence of qualifications is rarely submitted or requested and is not used as a means to justify if an applicant’s skilled for the positions they are applying for.
- 7.15.3 Transfer applications were found to have been given a similar level of scrutiny as the new applications. However, although the work permit process is a system to control the movement of guest workers, the audit found that applications for transfers are approved almost as frequently as renewal applications, again further disenfranchising longer job seekers.

ID Works Security

- 7.16 In 2007 the department, in an effort to safeguard the issuance of work permit identification cards, introduced a new digital ID card to replace the handwritten paper card. The overall impetus was to create an ID card that was not easily duplicated and also one that was more durable, since card holders were required to always be in possession of the identification. The department purchased the ID Works Systems from Advanced Business Systems for a cost of forty-seven thousand seventy dollars (\$47,070.00). At a cost of seventy five dollars (\$75.00) per card, the department will be able to recover the capital outlay after issuing approximately six hundred and twenty eight identification cards. Thus, enhancing the revenue stream of the department.
- 7.17 Although the system has multiuser capabilities, with each user having a unique username and password, the department has failed to implement this capability. What presently exists is a situation whereby the users all use the generic username and a single password that only changed in 2009 since the initial setting up of the system in 2007. This scenario has not only created a possible fraud rich environment but also renders some of the other security/control mechanisms of the system ineffective and nonfunctional.
- 7.18 The security of the ID system is further impacted by the placement of the machine/system in an open area that is easily accessible to both employees and clients of the department. This concern is further heightened due to the fact that the systems take a minimum of ten (10) minutes of inactivity before it times out if the operator neglects to lock the system when not in use, thus there is a ten (10) minute window of opportunity for the system to be manipulated.
- 7.19 Management has failed to adequately train and assign a person within the department or the Department of Information Technology as System Administrator for the system, nor have they entered into a maintenance contract with the supplier. As a result, if maintenance of the system is required, it must be outsourced at cost to the department.
- 7.20 The system lacks an administrator and as a result of the present single user setup, the possibility exists for current users to manipulate the system for undesirable purposes without detection.
- 7.21 In addition, with the current setup, fraud detection is near impossible and absolutely un-attributable because all cards are issued using the same username regardless of the operator.
- 7.22 Although the system has the capability to produce statistical and other reports, such capability has yet to be employed.

8.0 RECOMMENDATIONS

Work Permit Process

- 8.1 It is recommended that the work permit application forms be revised to provide more current and applicable information. An updated form would assist the department in collecting more pertinent information on which a decision can be based and also reduce the frequency of investigations to collect such information.
- 8.2 It is recommended that, in the long term, the department explore the feasibility of implementing a work permit management system similar to that used by Bermuda to assist the department in the management of the application process. Such a system will also assist with keeping the public informed at the various stages of the process and possibly reduce the number of inquiries to the department.
- 8.3 It is recommended that the Labour Department mandate that in addition to vacancies being advertised in the local newspapers, that all vacancies be simultaneously registered with the department. Such a mandate would assist the department in enforcing this requirement as well as facilitating the Job Placement function that exist within the Department. Similarly, Belongers should be encouraged to register with the department or at least notify the department when they have applied for advertised vacancies.
- 8.4 It is recommended that as part of the work permit requirements that employers be required to submit Good Standing Certificates, possibly twice a year, from both the Inland Revenue Department and the Social Security Board.
- 8.5 It is also recommended that the department move, with great expedience, to fill the positions of Deputy Commissioner and the Senior Labour Officers within the Employment Services Unit.
- 8.6 It is further recommended that the department move to implement a system that can to reconcile the JDE and ID Works system.
- 8.7 It is recommended that the department explore the feasibility of making the work permit application available online through the Government's portal or institute an application/processing fee. Implementing such measures will greatly reduce/defray the associated costs.

ID Works Security

- 8.8 It is recommended that the department immediately implement the usage of unique profiles for each user of the ID Works system.
- 8.9 It is further recommended that the department implement the security features that are indigenous to the software.
- 8.10 It is recommended that the department adequately train an individual, within the department or the Department of Information Technology, to assume the role of System Administrator for the system.
- 8.11 It is recommended that the department utilize the reporting and auditing capabilities of the system.
- 8.12 It is recommended that the department initiate a program of reconciliation between the ID Works systems and the JDE system. This reconciliation should be in line with the audit trail constraints of the systems.

9.0 CONCLUSION

- 9.1 The Labour Department plays a very important role in the overall economic development of the British Virgin Islands. Charged with the responsibility to regulate the employment and movement of "guest workers" within the Territory, the department employs the work permit process to achieve this objective. Although the process may have been an effective tool in accomplishing this function in the past, it has become an overwhelming function within the department. In its present state the process is inadequate and marginally effective. However, the perceived effectiveness is due to the lack of standards being in place on which applications are to be accessed. The absence of such standards have rendered the process extremely subjective. Controls and reporting capabilities throughout the process in some instances are lacking and in other areas too stringent, which have negatively impacted the overall effectiveness and efficiency of the process.
- 9.2 The implementation of the ID Works systems has improved the overall quality of the identification cards issued by the department. However, based on the current use of the system, it is apparent that the system was purchased solely to produce a card, as all the security, reporting and control mechanisms have been completely ignored. Although no instances of fraud were discovered based on sampling, the current situation creates an environment whereby fraud can be committed and go undetected.

MANAGEMENT'S RESPONSE

Labour Department Work Permit Process & ID System Security

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LABOUR DEPARTMENT

Government of the British Virgin Islands

MEMORANDUM

From: Labour Commissioner


To: Director of Internal Audit

Date: 3rd November, 2009-11-03

Draft Audit Report – Work Permit Recommendations

Reference is made to the Draft Audit Report dated 7th October, 2009. Attached please find my response to the recommendations made.

Should you require further information or clarification, please do not hesitate to contact me.



Mrs. Oleanvine Maynard

RECEIVED

11/11/09 (OC)

INTERNAL AUDIT UNIT
ROAD TOWN, TORTOLA

8.0 RECOMMENDATIONS

Work Permit Process

- 8.1 It is recommended that the work permit application forms be revised to provide more current and applicable information. An updated form would assist the department in collecting more pertinent information on which a decision can be based and also reduce the frequency of investigations to collect such information.

Agree/Disagree	Agree
Corrective action planned	Revision of Application Form (with input from the revised Labour Code which should come into force by year's end
Anticipated completion date	31 st January, 2010
Names(s) of contact person(s) responsible for corrective action	Terry Phillips, Memice Vanterpool and Beverly Todman

- 8.2 It is recommended that, in the long term, the department explore the feasibility of implementing a work permit management system similar to that used by Bermuda to assist the department in the management of the application process. Such a system will also assist with keeping the public informed at the various stages of the process and possibly reduce the number of inquiries to the department.

Agree/Disagree	Agree
Corrective action planned	Study the work permit management system that is enforced in Bermuda with a view to adopting areas that are relative to the need of the BVI. Possibly undertake a visit to Bermuda for a first hand oversight.
Anticipated completion date	31 st January, 2010
Names(s) of contact person(s) responsible for corrective action	Oleanvine Maynard

- 8.3 It is recommended that the Labour Department mandate that in addition to vacancies being advertised in the local newspapers, that all vacancies be simultaneously registered with the department. Such a mandate would assist the department in enforcing this requirement as well as facilitating the Job Placement function that exist within the Department. Similarly, Belongers should be encouraged to register with the department or at least notify the department when they have applied for advertised vacancies.

Agree/Disagree	Agree
Corrective action planned	A Human Resources Manager to be in place by the ending of this year. Person to monitor and develop program to ensure these measures are put in place and carried out.
Anticipated completion date	31 st January, 2010
Names(s) of contact person(s) responsible for corrective action	Permanent Secretary-MNR&L Oleanvine Maynard

- 8.4 It is recommended that as part of the work permit requirements that employers be required to submit Good Standing Certificates, possibly twice a year, from both the Inland Revenue Department and the Social Security Board.

Agree/Disagree	Agree
Corrective action planned	Requirement to be incorporated in the revised work permit application form.
Anticipated completion date	February, 2010
Names(s) of contact person(s) responsible for corrective action	Oleanvine Maynard, Beverly Todman, Mernice Vanterpool

- 8.5 It is also recommended that the department move, with great expedience, to fill the positions of Deputy Commissioner and the Senior Labour Officers within the Employment Services Unit.

Agree/Disagree	Agreed
Corrective action planned	Interviews are underway for the Deputy Commissioner's post. The other positions will be filled as soon as physical space becomes available to house the employees.
Anticipated completion date	February 2010
Names(s) of contact person(s) responsible for corrective action	Oleanvine Maynard, HRM, MNR&L and Director of Human Resources

- 8.6 It is further recommended that the department move to implement a system that can to reconcile the JDE and ID Works system.

Agree/Disagree	Agreed
Corrective action planned	Liaise with the Department of Information Technology to implement a system that provide said feature
Anticipated completion date	March 2010
Names(s) of contact person(s) responsible for corrective action	Oleanvine Maynard

- 8.7 It is recommended that the department explore the feasibility of making the work permit application available online through the Government's portal or institute an application/processing fee. Implementing such measures will greatly reduce/defray the associated costs.

Agree/Disagree	Agree
Corrective action planned	Quotation received for the launching of a website for the Department. Funding is being sought. Exploring links with HR website. Guidance sought on the viability of implementing an application fee.
Anticipated completion date	June 2010
Names(s) of contact person(s) responsible for corrective action	Oleanvine Maynard, Beverly Todman, Mernice Vanterpool

ID Works Security

- 8.8 It is recommended that the department immediately implement the usage of unique profiles for each user of the ID Works system.

Agree/Disagree	Agree
Corrective action planned	Liaise with the Department of Information Technology for the implementation of the profiles
Anticipated completion date	February 2010
Names(s) of contact person(s) responsible for corrective action	Beverly Todman

- 8.9 It is further recommended that the department implement the security features that are indigenous to the software.

Agree/Disagree	Agree
Corrective action planned	Liaise with the Department of Information Technology for assistance in implementing this feature.
Anticipated completion date	February 2010
Names(s) of contact person(s) responsible for corrective action	Oleanvine Maynard

- 8.10 It is recommended that the department adequately train an individual, within the department or the Department of Information Technology, to assume the role of System Administrator for the system.

Agree/Disagree	Agree
Corrective action planned	Seek assistance from the Department of Information Technology to assign one of their officers' temporarily and also Identify and train an officer the Labour Department to be the System Administrator. Identify and train an officer within the Department to be system administrator.
Anticipated completion date	February 2010
Names(s) of contact person(s) responsible for corrective action	Oleanvine Maynard

8.11 It is recommended that the department utilize the reporting and auditing capabilities of the system.

Agree/Disagree	Agree
Corrective action planned	The Department already utilizes a part of the reporting capability of the system. After further training by the Department of Information Technology its full capability will be utilized.
Anticipated completion date	February 2010
Names(s) of contact person(s) responsible for corrective action	Oleanvine Maynard

8.12 It is recommended that the department initiate a program of reconciliation between the ID Works systems and the JDE system. This reconciliation should be in line with the audit trail constraints of the systems.

Agree/Disagree	Agree
Corrective action planned	Identify officer within the Department to perform this function and be responsible for ensuring reconciliation once all the features are in place
Anticipated completion date	April 2010
Names(s) of contact person(s) responsible for corrective action	Oleanvine Maynard

INTERNAL AUDIT DEPARTMENT

CONFIDENTIAL



MINISTRY OF NATURAL RESOURCES AND LABOUR

WORK PERMIT EXEMPTIONS

AUGUST 2013

FINAL REPORT

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1.0 EXECUTIVE SUMMARY

The main findings and conclusions resulting from the audit on the Work Permit Exemption process are as follows:

- 1.1 The audit of the work permit exemption process found significant control deficiencies for which abusive practices have developed, which may have adverse effects on the Ministry and Department in achieving their operational objectives.
 - 1.1.1 Firstly, the work permit exemption policy is ambiguous as it is frequently and abruptly changed to accommodate the needs of Cabinet.
 - 1.1.2 The audit found instances where exemptions were issued without due process. Based on an amendment to the policy, Cabinet members are allowed to submit extra names directly to the Cabinet Secretary to be added to the list by the subject Ministry.
 - 1.1.3 Although the policy was introduced to remove the discretionary manner in which exemptions were being issued, the audit found that the majority of exemptions were still being issued on a discretionary basis.
 - 1.1.4 Overall, the audit found that a significant number of exemptions (under the Minister's Discretion category) were approved by Cabinet where the applicants did not meet the eligibility criteria nor did the applicant provide sufficient evidence to satisfy their eligibility.
- 1.2 The audit found the issuance of exemptions to potentially undermine the indigenous labour market (British Virgin Islanders and Belongers). Based on the policy, exempted persons can freely seek employment in the company of their choice without any controls from the Labour Department, this provision in the policy makes it difficult for the Labour Department to monitor and enforce the Labour Code. Additionally, this provision has affected the Immigration Department, as the mechanism by which migrant workers usually updated their immigration status may seem to have been removed (a falsely perceived enhancement to their immigration status).
- 1.3 The most obvious effect of the issuance of work permit exemption is on Government's revenues. Based on our estimation, Government loses five hundred dollars on average for every exemption issued. Aggregately, the Government potentially loss one million, one hundred thousand dollars (\$1,100,000) over the last five (5) years as a result of issuing work permits exemptions.

2.0 INTRODUCTION

- 2.1 The work permit exemption provisions of Labour Code Act of 2010 (the Code) makes it possible for select classes of migrant employees from having to obtain a work permit. There are four general categories under which migrant employees may obtain an exemption under the Act. The audit focused on Section 172 (d) which empowers the Cabinet by order to exempt an ‘employee’ from obtaining on work permit. The audit also focused on the Minister’s obligation to develop a comprehensive policy on international migration for employment. The details of this mandate are spelt out in Section 178 of the Code and are as follows.

The Minister shall prepare and review annually, a comprehensive policy on international migration for employment that:

- (a) is based on the economic and social needs of the Virgin Islands; and*
- (b) takes into account*
 - i. the short-term need of human resources;*
 - ii. the short-term availability of human resources in the Virgin Islands; and*
 - iii. the long-term social and economical consequences of migration for Virgin Islanders, Belongers and migrant employees.*

The Minister is also required to submit the prepared policy and/or any revision(s) to Cabinet for its approval and subsequently laid on the table of the House of Assembly.

- 2.2 Initially the work permit exemption audit sought to ascertain the level of compliance with the work permit exemption policy approved and made public in 2008. This plan was slightly modified to accommodate amendments made to the policy by Cabinet. As a result, the audit was redesigned to include an assessment of the policy’s effectiveness in relations to the comprehensive policy required by law.
- 2.3 Likewise, the issuance of this report comes at a pivotal time when the focus of the Government’s labour policy is expected to change where greater emphasis will be placed on ensuring that British Virgins Islanders and Belongers are indeed given preferential consideration within the labour market, as required by law. This renewed focus is expected to result in changes to the current work permit exemption policy and the granting of exemptions. As such, the findings of this report can be used to assist the Government in improving and/or creating a new labour policy.

3.0 PRIOR AUDIT COVERAGE

- 3.1. Based on our records, we are unaware of any audit conducted on the work permit exemption process within the last five (5) years. However, an audit and a follow up review were conducted on the work permit process in July 2009 and August 2010 respectively. At the conclusion of the aforementioned follow-up review, a significant number of issues identified in the substantive report remained unresolved.

4.0 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.

5.0 AUDIT SCOPE

- 5.1 This audit will focus on the Work Permit Exemptions issued after the implementation of Work Permit Exemption policies announced by the Government of the Virgin Islands in August 2008.

6.0 AUDIT OBJECTIVES

- 6.1 To give assurance that the work permit exemptions granted were awarded in compliance with the work permit exemption policy.
- 6.2 To assess the impact the issuance of work permit exemptions has on revenues.
- 6.3 To identify any adverse effects the issuance of work permit exemptions may pose on the indigenous labour market (Virgin Islander and Belongers).
- 6.4 To give assurance that work permit exemptions granted are in compliance with Section 72 (d) of the Labour Code Act 2010 (Act 4 of 2010).

7.0 METHODOLOGY

- 7.1 In planning the audit relevant legislation(s), policies and procedures were reviewed in formulating our audit procedures.
- 7.2 Other documentary evidence in support of our findings and conclusion were derived from the Ministry's reports and files. A sample examination of work permit exemption applications was also conducted and the results of these testing form part of our audit findings.

- 7.3 A sample (304) review of application to determine whether the applications selected were approved based on the work permit exemption policy.
- 7.4 Interviews were conducted with pertinent staff from the Ministry of Natural Resources and Labour in addition to those conducted with the Permanent Secretary, the Chief Immigration Officer and the Labour Commissioner.

8.0 AUDIT CRITERIA

- 8.1 The work permit exemption process should be guided by a formulated policy that is transparent and equitable.
- 8.2 Eligibility criteria should be in place for applications for exemptions.
- 8.3 In administering the programme there should be procedures in place for accepting and evaluating applications for exemptions.
- 8.4 Work permit exemptions should be issued in accordance with Labour Code Act, 2010.
- 8.5 Control mechanisms should be in place to identify and correct adverse effects as a consequence of issuing work permit exemptions.

9.0 LIMITATIONS

- 9.1 The execution of this audit was limited due to a lack of information to adequately assess the full impact on Government's revenues and to effectively identify the adverse effect(s) the issuance of exemptions may have on the indigenous Labour Market. Although, several requests for information were submitted to the Labour and Immigration Departments, these departments had difficulty in providing the information and in some instances the information did not exist. As a result, the Audit Team had to draw inferences and rely on information provided during interviews.

10.0 FACTS AND FINDINGS

BACKGROUND

- 10.1 In 2010, the House of Assembly passed the Labour Code Act, 2010 (No. 4 of 2010) which came into force on October 4, 2010. This legislation replaced the Labour Ordinance, the Labour Code Ordinance and the Trade Disputes (Arbitration and Inquiry) Act. In an effort to incorporate existing rules, orders and regulations within the current legislation, provisions were made for the continuity of any rule, order or regulation under the repealed legislations. The wording of these provisions follows:

10.1.1 Section 187. (1) *The Labour Ordinance, the Labour Code Ordinance and the Trade Disputes (Arbitration and Inquiry) Act are repealed.*

10.1.2 Section 187. (2) *Notwithstanding the repeal of the enactments mentioned in subsection (1),*

(a) Any Rule, Order or Regulation made under the repealed enactment shall, until revoked, continue to be in force to the extent that the Rule, Order, Regulations is not inconsistent with the code;

(b) Any requirement performed, table of fees, licenses or certificates issued, notice, decision, determination, direction or approval given, application made, or thing done, under any of the repealed enactments, shall, if in force on the date immediately prior to the coming into force of the Code, continue in force, or in the case of a license or certificate, continue in force until the date of expiry of the license or certificate as set out in the license or certificate, and shall, so far as it could have been made, issued, given or done under the Code have effect as if made, issued, given or done under the corresponding provision of the Code.

10.2 On August 7, 2008, a memorandum was issued by the Permanent Secretary in the Ministry of Natural Resources and Labour conveying Cabinet's decision with regards to the granting of work permit exemptions. This directive forms the basis for our assessment of the work permit exemption process and the awarding of work permit exemptions. The work permit exemption policy as conveyed by the Ministry is as follows:

- i. Exemptions would be granted based on enrolment in the school system.
- ii. Exemptions will be granted on the basis of marriage to a believer. Additionally, Cabinet directed that persons exempted under this condition must be married for a minimum of three years.
- iii. Persons residing in the territory for twenty (20) years or more and of good character will be permanently exempted from having to obtain a work permit. Additionally, it stated that Cabinet will not consider the award of any exemptions for persons residing in the territory for less than twenty (20) years.

10.3 Prior to the enactment of the Labour Code Act, 2010, there were two (2) Work Permit Exemption Orders (Statutory Instrument Nos. 10/2009 & 56/2009), where all of the exemptions granted under those orders were to expire on or before the end of 2011.

COMPREHENSIVE POLICY ON INTERNATIONAL MIGRATION

10.4 Since the enactment of the Labour Code Act, 2010, the Government of the Virgin Islands has not developed the required comprehensive policy on international migration. The absent of such policy has resulted in decisions being made in isolation rather than from an informed (strategic and systematic) point of view.

THE WORK PERMIT EXEMPTION POLICY

- 10.5 Although Cabinet approved a policy by which the Work Permit Exemption process would be guided, Cabinet has on numerous occasions approved exemptions on a discretionary basis contrary to the established policy. This practice has negated the intended purpose of the Work Permit Exemption Policy which was to bring both transparency and equity in the awarding of exemptions. **Based on our sample examination, approximately 67 percent of exemptions issued were issued outside the established criteria by Cabinet, the Ministry of Natural Resources and Labour and the Labour Department.**
- 10.6 The original work permit exemption policy was approved on July 16, 2008. Since its approval, the policy has undergone numerous amendments without adequate justification and in some instances against the advice of the Financial Secretary and the Chief Immigration Officer. Based on a review of Cabinet extracts, the following is a chronology of amendments made to the Policy originally issued on August 7, 2008:
- 10.6.1 On September 8, 2008 – Cabinet via Extract Memo 314/2008 amended the policy allowing “work permit exemptions [to] be granted automatically to persons on the basis of marriage to a believer on a permanent basis only as long as the couple is married and living together and not divorced. Additionally, via Extract Memo 314/2008, Cabinet also amended the Policy to allow “persons in the employment of voluntary organizations be granted permanent exemptions from work permits.”
- 10.6.2 On October 23, 2009 – Cabinet, via Extract Memo 288/2009, again amended the Policy to reflect that “persons receiving permanent exemption from work permit receive that exemption in 2-year intervals and are required to pay a renewal fee every 2 years; j) agreed [that] a maximum number of 200 new work permit exemptions presented for Minister's discretion to be approved (per annum) by Cabinet; and k) persons granted work permit exemptions are free to seek employment in the company of their choice and not be subject to remain in the employ of the company with which they are employed when the exemption is granted.”
- 10.6.3 On September 1, 2010 – Cabinet via Memo No. 259/2010 decided that all work permits granted by the Cabinet are to be indefinite and that all work permit exemptions previously granted by Cabinet or Executive Council be made permanent, subject to the advice of the Attorney General. However, no documentation was provided to verify the basis of the Attorney General's advice.
- 10.6.4 December 8, 2010 – Cabinet via Memo No. 360/2010 “decided that Members could submit extra names [for Exemptions] directly to the Cabinet Secretary to be added to the lists.”

- 10.7 Based on the amendments to the policy outlined above, the audit team found numerous instances in which these amendments could be used and where they could be abused and where they do not promote the original intent of the Policy.
- 10.7.1 The granting of a Work Permit Exemption was intended to be a privilege granted to persons that met a specific criterion. The exemption(s) was never intended to be a right. However, based on the amendment made on September 8, 2008, the Cabinet by making the granting of an exemption “automatically” on the basis of marriage, in essence, seeks to elevate this privilege to that of a right which is obtained because of the union. This amendment in essence removed an important control that deterred persons from entering into marriages of convenience with the sole purpose of obtaining an exemption.
- 10.7.2 Likewise, the provision for granting exemptions based on employment with voluntary organizations leaves this privilege open to abuse. Persons granted these exemptions are able to move freely within the labour market as no restrictions are placed on these individuals. Additionally, this condition can be abused by persons who only seek to join voluntary organizations as a means of obtaining the work permit exemption. Once the exemption is obtained these persons can disassociate themselves from the organization and is free to seek employment elsewhere thereby circumventing the work permit process.
- 10.7.3 Amendment to the policy on October 23, 2010 which made it possible for exempted employees to freely seek employment in the company of their choice may prove to have disenfranchising effects on the protected population (Virgin Islander and Belonger). Exempted employees can now freely compete on the job market without any hindrance or control from the Labour Department. Although Cabinet concurred that an exemption does not enhance a migrant employee’s immigration status, this amendment also makes it difficult for the Immigration Department to enforce immigration laws, as the mechanism by which migrant employees usually update their immigration status may seem to be removed (a falsely perceived enhancement to their immigration status).
- 10.8 The work permit exemption policy was analyzed and found to be inadequate. In our opinion, the policy only provided the criteria for eligibility, but failed to provide the comprehensive framework for which applications for exemption would be approved. Additionally, guidelines laid out in the current policy gives vague directives as to what conditions are required to be met in order for applicants to be granted the exemption. This shortcoming in the policy has resulted in the approval of approximately one thousand four hundred (1,400) exemptions in a three (3) year span, which the audit found to be excessive and unsustainable.

10.8.1 The Work Permit Policy as amended is vague and allows for inequity to occur. For example, a person residing in the territory for fifteen (15) years may not be eligible for the exemption; however, a person enrolled in the school system for two (2) years may be deemed eligible. Similarly, a person who makes periodic trips to the Territory may also be granted an exemption at the Minister's Discretion whereas the person resident for fifteen (15) years may again not be eligible.

10.8.2 The exemption category called "Minister's Discretion" may be misleading since all exemptions are awarded on a discretionary basis and the policy only seeks to provide a basis on which this discretion will be exercised. Particular to this category, there is a criteria (living in the territory for twenty years or more) to be met in order to be considered for this exemption. The requirement to be met for this category is explicit in the policy and the eligibility to be granted an exemption under this category, based on our interpretation of the policy, is in no way based on the Minister's Discretion. However, we have found that this category has been used to exempt persons who would have otherwise been ineligible to be considered for an exemption. We find that the application of this category is done in an abusive and inequitable manner, as the category was split to give special consideration to ineligible applicants. It is also worth mentioning that the majority exemptions were awarded from within this category.

APPLICATION AND APPROVAL PROCESSES

10.9 There are three (3) classes of exemptions under the policy for which migrant employees may apply. They are:

Class	Criteria
Exemption by Marriage	2 current passport size photos A current police certificate A certified true copy of the marriage certificate A copy of spouses Belonger Card, Naturalization certificate or Birth certificate
Exemption by Enrolment in School System	2 current passport size photos Copies of school leaving certificates A current police certificate
Exemption – Other (Minister's Discretion)*	2 current passport size photos A current police certificate

**which is earmarked for those persons who are seeking exemption under the twenty (20) years or more provision.*

- 10.10 The work permit exemption process is as follows:
- a. An Application form is obtained from the Labour Department or the Ministry of Natural Resources and Labour.
 - b. The Application is filled out by the employee.
 - c. The Application is submitted to the Labour Department with the required documents.
 - d. The Labour Department reviews the application for completeness and may query the application if they discover a discrepancy.
 - e. The Labour Commissioner makes a recommendation for approval or disapproval. Applicants are informed by letter if their application is denied.
 - f. Labour Department batches the approved applications and prepares a cover memo along with a summary of findings and recommendations.
 - g. The batched applications are submitted to the Ministry of Natural Resources and Labour for review after which is forwarded to the Minister for approval.
 - h. A Cabinet Paper is prepared by the Ministry for submission to the Cabinet Secretary.
 - i. Submission is made to Cabinet for consideration and approval.
 - j. Approved exemptions are published in the Official Gazette after the Attorney General's consideration.
- 10.11 During the course of the audit, numerous issues within the application and approval process were discovered that diminishes its effectiveness and efficiency. Issues specifically related to the manner in which applications are advanced through the process without adequate due diligence being conducted at various stages.
- 10.11.1 The application form to be filled by applicants seeking an exemption provides sections for the Labour Commissioner's comments and the Minister's approval. However, it was found that approximately ninety five (95) percent of the applications approved by Cabinet did not indicate that the application was approved by the Minister and were without a recommendation from the Commissioner of Labour. These applications were eventually submitted to Cabinet and received approval, in most cases, without any evidence that the Ministry or the Labour Department ever performed any or adequate due diligence. We find this to have limiting effects on Cabinet, as the body tends to rely heavily on the advice provided by the Ministry in making its decisions.
- 10.11.2 Likewise, an unaccepted practice was found where incomplete applications, applications with insufficient documentation, and applications that did not meet the criteria were accepted by either the Labour Department or the Ministry. This practice resulted in situations where a significant number of applications were processed and subsequently approved by Cabinet without being adequately scrutinized and assessed based on the criteria. In one of the most extreme cases, an expired work permit exemption card stapled to a single blank sheet of paper was submitted. This submission alone was the sole documentation provided as the basis on which the subsequent work permit exemption was approved.

- 10.11.3 The process lacks formally documented procedures and a clear process owner which has resulted in applications being accepted both at the Department of Labour and at the Ministry simultaneously. This has created some inconsistencies in the manner in which applications are accepted and processed.
- 10.11.4 Additionally, it was found that names of individuals desiring an exemption are sometimes added at the Cabinet level after the Cabinet Paper was drafted by the subject Ministry. This practice was also found to be ingrained in the Cabinet's decision. Such a practice leaves open the possibility of persons of undesirable character to obtain exemptions since the ordinary due diligence is not conducted on these persons.
- 10.11.5 At the Ministry's request, applications that do not meet the criteria and are disapproved at the Labour Department are to be submitted to the Minister for consideration and in most instances are approved. This practice of approving applications that do not meet the criteria set by Cabinet erodes the overall transparency and diminishes the standards set in awarding exemption.
- 10.11.6 It was also discovered where applications were filed in one year but there exemption was approved two (2) years after. The current process does take into consideration that during the time from application to actually being awarded, the applicant's status within the territory could have changed.
- 10.11.7 Numerous instances were found where applicants submitted the stamped portion of their passport instead of the entire passport document. Currently, the Immigration Department does not enter the person's name on the entry stamp that is placed within passports. The Audit Team is concerned with such practices as the possibility exists for applicants to submit another person's stamped passport to support their application.

APPLICATION REVIEW RESULTS

- 10.12 The results of sample testing performed on the applications made for work permit exemptions approved within the scope years were reviewed for compliance with the exemption policy and labour laws.
- 10.12.1 Overall, the audit found a significant number of exemptions (under the Minister's Discretion category) that were approved by Cabinet but the applicant did not meet the criteria nor did the applicant provide sufficient evidence to satisfy their eligibility. Similarly, the majority of exemptions granted under the enrolment in the school system followed the same pattern where most applicants failed to prove their tenure at schools. Results of our testing follows:

Work Permit Exemptions - Summary Results of Audit Testing		
<u>Total - By Minister's Discretion (20 years or more)</u>		
Population (Exemptions issued)¹	618	
Sample (Exemptions reviewed)	190	31%
No. of Applicants who met criteria	19	10%
No. of Applicants who did not meet criteria	171	90%
<u>Total - By Marriage</u>		
Population (Exemptions issued)	273	
Sample (Exemptions reviewed)	64	23%
No. of Applicants who met criteria	57	89%
No. of Applicants who did not meet criteria	7	11%
<u>Total - By School</u>		
Population (Exemptions issued)	141	
Sample (Exemptions reviewed)	50	35%
No. of Applicants who met criteria	23	46%
No. of Applicants who did not meet criteria	27	54%
Total Population (Exemptions issued)	1032	
Total Sample (Exemptions reviewed)	304	29%
Total No. of Applicants who met Criteria	99	33%
Total No. of Applicants who did not met Criteria	205	67%

10.12.2 The annual limit of exemptions to be issued under the Minister's Discretion as of October 2009 is two hundred (200). The audit found that this requirement was not adhered to as over three hundred (300) exemptions were issued in 2011.

10.12.3 Due to the absence or the lack of adequate inter-departmental consultation, it was discovered that an applicant was granted a work permit exemption after that person was ordered by the Governor to leave (deportation) the Virgin Islands. We believe had further due diligence been conducted on the applicant at the Immigration Department, this situation would have possibly been averted.

¹ This number does not represent the total number of exemptions issued for any given period, it only represent the pool of exemptions that were tested.

IMPACT ON LABOUR MARKET & GOVERNMENT DEPARTMENTS

- 10.13 The audit found the issuance of work permit exemptions to have some impact on Government's revenues (workpermit fees). Based on our estimation for the last five years, the Government has realised a decline in revenue as a result of issuing work permit exemptions in the amount of one million one hundred and fifty two thousand, five hundred dollars (\$1,152,500.00). The following table illustrates the potential revenue loss (minimum, maximum and estimated loss) by year:

Annual Revenue Loss as a result of Issuing Exemptions					
	2007	2008	2009	2010	2011
Number of Exemptions Issued	479	450	525	9	842
Minimum Loss @ Rate (\$100.00)	47,900.00	45,000.00	52,500.00	900.00	84,200.00
Maximum Loss @ Rate (\$1,000.00)	22,944,100	20,250,000	27,562,500	8,100	70,896,400
Estimated Loss (\$500.00)*	239,500.00	225,000.00	262,500.00	4,500.00	421,000.00
* The estimated loss is determined by assuming that \$500.00 is loss on average per exemption issued, this is based on the assumption that \$533,000 is actually loss while issuing 1060 exemptions.					

- 10.14 The audit set out to assess the impact the decision of issuing exemptions are having on the revenues of the Labour Department and by extension the public purse. However, the Labour Department could not provide the audit team with the necessary statistics and data to perform such analysis. Upon further inquiry, the audit team found that although the Financial Secretary had reservations on the direct impact on revenues and suggested such analysis be conducted given the economic challenges the Government was facing, no such analysis was done and Cabinet papers were prepared and approved without the financial implications provided.
- 10.15 The Labour Department nor the Ministry of Natural Resources and Labour have implemented the necessary procedures to formally evaluate the impact of the issuance of exemptions on the labour market. However, in speaking with the Labour Commissioner, she highlighted a number of potential effects:
- 10.15.1 Persons receiving exemptions are competing heavily with locals for jobs.
 - 10.15.2 There is an added burden in tracking exempted persons' employment status, since they are no longer required to report to the Labour Department.
 - 10.15.3 Increase difficulty in maintaining labour statistic.
 - 10.15.4 Creates greater difficulty in advocacy for employment opportunities for the protected segment of the labour force.

11.0 RECOMMENDATIONS

PREFACE TO RECOMMENDATIONS

The issues outlined in this report are, for the most part, a direct result of the decisions and actions of Cabinet. Therefore, the ensuing recommendations are offered to the Ministry with the hope that the Ministry, once it has agreed with the recommendations, will make the necessary representation to Cabinet to correct the deficiencies identified.

RECOMMENDATIONS

- 11.1 At present, based on the advice of the Attorney General, Work Permit Exemptions are issued indefinitely on the grounds that the Labour Code Act does not make provisions for the Cabinet to place conditions on the exemptions being issued, as was the practice prior to the Attorney General's advice. Based on the previous practice, we recommend that if it was indeed the intent of the House of Assembly, through the legislation, to place conditions on the issuance of work permit exemption, that the Labour Code Act 2010 be amended to reflect such.
- 11.2 In an effort to bring equity and transparency to the Work Permit Exemption process and to bring conformity to the Labour Code Act, it is recommended that the Ministry implement the required comprehensive policy on international migration. This policy should provide a framework or the basis for granting Work Permit Exemptions taking into consideration the socio-economical dynamic of the Virgin Islands.
- 11.3 It is further recommended that the current Work Permit Exemption policy be revamped and a new policy implemented that provides sound eligibility requirements with adequate application and approval standards. Likewise, the policy should address the following concerns:
 - 11.3.1 The information to be collected from applicants and the supporting documentation required. If an application form will be utilised, standards should be put in place to ensure that it is completely filled and supporting document attached before it is accepted. A date of application should be affixed by the receiving agency and the application must be approved by the Minister or the Permanent Secretary before it is considered by Cabinet.
 - 11.3.2 Work Permit Exemptions should not be automatic; it should be granted in accordance with the law (an Order issued by Cabinet).
- 11.4 It is recommended that the following amendments be made to the current policy:
 - 11.4.1 A preventative control should be included in the policy to deter marriages of convenience for the sole purpose of obtaining an exemption. We suggest reinstituting the condition that the applicant be married to a Resident or a Belonger for at least three years.

- 11.4.2 That the provision that allows persons working for a voluntary organisation to be exempted be removed and the exemptions previously granted under this provision be revoked or the approval be made conditional.
- 11.4.3 The Amendment made on the 23 October 2010 to the original policy that allowed ‘employees to freely seek employment in the company of choice’ be removed as this allowance greatly affect the processes of the Immigration Department and has other adverse effects as mentioned earlier in this report.
- 11.4.4 If it is the Policy Makers’ intent to continue to issue exemptions to employees who have resided for twenty or more years, it is recommended that the title or name of this category be changed from “Minister’s Discretion” and be called “Exemption by Length of Domicile” or the like.
- 11.5 It is recommended that the issuance of exemptions under special consideration by the Minister be discontinued as there is no transparent and equitable manner in which approval is granted. It is further recommended that all exemptions previously issued under this heading be reconsidered or revoked where necessary.
- 11.6 Due to the fact that a large percentage of exemptions were approved on a discretionary basis contrary to the categories set out in the current exemption policy and that Cabinet opted to reauthorize a large number of prior Exemptions Order rather than allowing applicants to reapply, it is recommended that all Work Permit Exemptions issued under the “Minister Discretion” category, especially those granted under special consideration be reconsidered and revoked in addition to the Exemption Orders exempting employees who were previously exempted under a previous order. This would bring the necessary correction to an inequitable practice where individuals were granted exemptions without having to submit an application and those issued solely at Cabinet’s discretion.
- 11.7 In situations where the conditions of a policy issued by Cabinet has changed, it is recommended that the Ministry conduct an assessment on how these changes will affect current operating procedures and where amendments are needed, they are made. For example, if Cabinet places a ceiling on the amount of exemptions that can be approved in any one year, then the Ministry is expected to adjust its internal procedures to reflect this change.

OTHER RECOMMENDATIONS

- 11.8 In order to confirm the legality of exemptions issued under the current policy, it is recommended that the Ministry commence a review to identify and locate those persons who were granted an exemption while they were unemployed and at the time of application did not possess a work permit. It is further recommended that the Ministry seeks advice from the Attorney General on this matter.

12.0 CONCLUSION

- 12.1 The work permit exemption programme was initially developed to provide relief to a certain category of persons who have committed themselves to residing in the Virgin Islands, which at the time was demonstrated through marriage to someone deemed to belong or reside in the Virgin Islands. The programme has since evolved to include other categories of persons. At this juncture in the programme's existence, a fundamental question needs to be answered, does the continuation of the programme provide any benefits to the people of the Virgin Islands and if in the affirmative at what cost. Therefore, the Government is encouraged to commence the process of evaluating the pros and cons of allowing this programme to continue unregulated before it becomes unsustainable.
- 12.2 Based on our evaluation of the programme, the benefits of obtaining a Work Permit Exemption gravitate and mostly benefit migrants. Some of the benefits provided are: freedom to move to the employment of their choice and exemption from paying work permit fees. Contrary, the cost of issuing exemption are manifesting in the adversities experienced by the indigenous labour force where they have to compete with exempted persons for jobs, the reduction in Government revenues, and additional utilization of resources by Government Departments to monitor and track exempted persons in order to carry out their respective mandates.
- 12.3 The Work Permit criteria/policy have evolved over time to suit Cabinet/Ministers desires without giving true and genuine consideration as to the implications on the labour force and the Public Purse as required by law.
- 12.4 The issuance of this report comes at a pivotal time where the focus of Government's labour policy is expected to change as greater emphasis will be placed in ensuring that the indigenous labourers are given preferential consideration through stiffer enforcement of the labour code. With this goal in mind, the issues identified in this report are of significant value to the Government towards improving the current labour policy or in the development of a new policy.
- 12.5 In the final analysis, the issues surrounding the issuance of work permit exemptions are significant. If these issues remain unresolved and the programme continues on its current trajectory, there is a high probability that this situation will create unsustainable conditions for the Government and the indigenous labour market. Therefore, the Government is encouraged to commit to taking corrective actions by implementing the recommendations provided within this report.

MANAGEMENT'S RESPONSE



*MINISTRY OF NATURAL RESOURCES & LABOUR
Government of the Virgin Islands
33 Admin Drive, Central Administration Complex
Road Town, Tortola, British Virgin Islands
Tel: (284) 468-0675
Fax: (284) 494-4283
Email: nrl@gov.vg*

MEMORANDUM

REF. NO.: LAB. L1/72

TO: Ag. Director of Internal Audit
Internal Audit Department

FROM: Permanent Secretary,
Ministry of Natural Resources and Labour

DATE: 29th July, 2013


RE: Draft Internal Audit Report – Ministry of Natural Resources and Labour –
Work Permit Exemptions

Your memorandum dated 21st May, 2013 similarly captioned together with the Draft Internal Audit Report is hereby acknowledged. Please accept my apology for the late response.

Based on your findings and recommendations, I have endeavoured to complete the appropriate responses which are attached.

Thank you for your patience and understanding in this regard.

Sincerely,


Ronald Smith-Berkeley
Permanent Secretary

RSB/jk



"Professional Services Delivered to the Public"

AUDIT RECOMMENDATIONS

PREFACE TO RECOMMENDATIONS

The issues outlined in this report are, for the most part, a direct result of the decisions and actions of Cabinet. Therefore, the ensuing recommendations are offered to the Ministry with the hope that the Ministry, once it has agreed with the recommendations, will make the necessary representation to Cabinet to correct the deficiencies indentified.

- 11.1 At present, based on the advice of the Attorney General, Work Permit Exemptions are issued indefinitely on the grounds that the Labour Code Act does not make provisions for the Cabinet to place conditions on the exemptions being issued, as was the practice prior to the Attorney General's advice. Based on the previous practice, we recommend that if it was indeed the intent of the House of Assembly, through the legislation, to place conditions on the issuance of work permit exemption, that the Labour Code Act 2010 be amended to reflect such.

Agree/Disagree	Agree
Corrective action planned	The Labour Code Act 2010 is a work in progress and the Ministry is aware of the necessity to implement certain amendments to enhance the Code. Hence, we have sought Attorney General's assistance in drafting new regulations to accompany the Code
Anticipated completion date	2014
Name(s) of contact Person(s) responsible for Corrective action.	

- 11.2 In an effort to bring equity and transparency to the Work Permit Exemption process and to bring conformity to the Labour Code Act, it is recommended that the Ministry implement the required comprehensive policy on international migration. This policy should provide a framework or the basis for granting Work Permit Exemptions taking into consideration the socio-economical dynamic of the Virgin Islands.

Agree/Disagree	Agree
Corrective action planned	The Ministry is cognizant of the fact that implementation of a comprehensive policy on international migration is the coordinated effort of all relevant departments, specifically Immigration and Labour Departments. This issue is being considered.
Anticipated completion date	2014
Name(s) of contact Person(s) responsible for Corrective action.	

- 11.3 It is further recommended that the current Work Permit Exemption policy be revamped and a new policy implemented that provides sound eligibility requirements with adequate application and approval standards. Likewise, the policy should address the following concerns:

11.3.1 The information to be collected from applicants and the supporting documentation required. If an application form will be utilized, standards should put in place to ensure that it is completely filled and supporting document attached before it is accepted. A date of application should be affixed by the receiving agency and the application must be approved by the Minister or the Permanent Secretary before it is considered by Cabinet.

11.3.2 Work Permit Exemptions should not be automatic; it should be granted in accordance with the law (an Order issued by Cabinet).

Agree/Disagree	
Corrective action planned	<p>11.3 The work permit exemption process is a work in progress and it continues to evolve as the Ministry sees the need. Hence, the Ministry will consider revamping the process and implementing new policies as an ongoing initiative.</p> <p>11.3.1 The Ministry is of the opinion that this recommendation is already being met. All applications submitted for consideration are assessed individually and approved on a whole “in principle” by the Minister prior to requesting Cabinet’s approval.</p> <p>11.3.2 Whereas an individual may qualify for a work permit exemption because they met one of the conditions, it is never deemed automatic. The final decision rests with the Cabinet and is eventually gazetted.</p>
Anticipated completion date	Not applicable
Name(s) of contact Person(s) responsible for Corrective action.	

11.4 It is recommended that the following amendments be made to the current policy:

- 11.4.1 A preventative control should be included in the policy to deter marriages of convenience for the sole purpose of obtaining an exemption. We suggest reinstituting the condition that the applicant be married to a Resident or a Belonger for at least three years.
- 11.4.2 That the provision that allows persons working for a voluntary organization to be exempted be removed, and the exemptions previously granted under this provision be revoked or the approval be made conditional.
- 11.4.3 The Amendment made on the 23 October 2010 to the original policy that allowed 'employees to freely seek employment in the company of choice' be removed as this allowance greatly affects the processes of the Immigration Department and has other adverse effects as mentioned earlier in this report.
- 11.4.4 If it is the Policy Makers' intent to continue to issue exemptions to employees who have resided for twenty or more years, it is recommended that the title or name of this category be changed from "Minister's Discretion" and be called "Exemption by Length of Domicile" or the like.

Agree/Disagree	
Corrective action planned	<p>11.4.1 The Ministry will consider this recommendation while drafting regulations.</p> <p>11.4.2 The Ministry will consider while drafting regulations. However, except for changing of the law, the Ministry cannot legitimately revoke these exemptions.</p> <p>11.4.3 The Ministry is aware of the impact of this policy and it is being considered in new amendments.</p> <p>11.4.4 The Ministry will consider this recommendation while drafting regulations.</p>
Anticipated completion date	
Name(s) of contact Person(s) responsible for Corrective action.	

- 11.5 It is recommended that the issuance of exemptions under special consideration by the Minister be discontinued as there is no transparent and equitable manner in which approval is granted. It is further recommended that all exemptions previously issued under this heading be reconsidered or revoked where necessary.

Agree/Disagree	Disagree
Corrective action planned	All work permit exemptions are based on the consideration of and are approved in principle by the Minister prior to Cabinet's final approval. Hence, even if an exemption is issued based on special consideration (i.e. outside of the parameters of the stated criteria), it remains initially at the consideration or discretion of the Minister and ultimately with Cabinet.
Anticipated completion date	Not applicable
Name(s) of contact Person(s) responsible for Corrective action.	

- 11.6 Due to the fact that a large percentage of exemptions were approved on a discretionary basis contrary to the categories set out in the current exemption policy and that Cabinet opted to reauthorize a large number of prior Exemptions Order rather than allowing applicants to reapply, it is recommended that all Work Permit Exemptions issued under the "Minister Discretion" category, especially those granted under special consideration be reconsidered and revoked in addition to the Exemption Orders exempting employees who were previously exempted under a previous order. This would bring the necessary correction to an inequitable practice where individuals were granted exemptions without having to submit an application and those issued solely at Cabinet's discretion.

Agree/Disagree	Disagree
Corrective action planned	All work permit exemptions are based on the consideration of and are approved in principle by the Minister prior to Cabinet's final approval. Hence, even if an exemption is issued based on special consideration (i.e. outside of the parameters of the stated criteria), it remains initially at the consideration or discretion of the Minister and ultimately with Cabinet.
Anticipated completion date	
Name(s) of contact Person(s) responsible for Corrective action.	

- 11.7 In situations where the conditions of a policy issued by Cabinet has changed, it is recommended that the Ministry conduct an assessment on how these changes will affect current operating procedures and where amendments are needed, they are made. For example, if Cabinet places a ceiling on the amount of exemptions that can be approved in any one year, then the Ministry is expected to adjust its internal procedures to reflect this change.

Agree/Disagree	Agree
Corrective action planned	The Ministry has endeavored to put into effect any ruling that Cabinet has made. However, there were instances wherein certain amendments needed to be made to the legislation before the implementation of the decision.
Anticipated completion date	
Name(s) of contact Person(s) responsible for Corrective action.	

Other Recommendations

- 11.8 In order to confirm the legality of exemptions issued under the current policy, it is recommended that the Ministry commence a review to identify and locate those persons who were granted an exemption while they were unemployed and at the time of application did not possess a work permit. It is further recommended that the Ministry seeks advice from the Attorney General on this matter.

Agree/Disagree	Disagree
Corrective action planned	The Ministry will seek advice from the Attorney General on the legality and feasibility of this recommendation.
Anticipated completion date	2014
Name(s) of contact Person(s) responsible for Corrective action.	

Applications for Certificates of Belonger Status - (Immigration Regularization – Batch No. 01)

Signed

· 20 August 2019 · MNRLI · Ms. Nadia Demming-Hodge · Memo No. 289/2019

Background Information

1) On the 3rd June, 2019 the House of Assembly passed a Bill entitled Immigration and Passport (Amendment) Act, 2019 (**see Appendix A**), which was assented to by the Acting Governor on 12th June, 2019. This amendment allowed for a special fast track process to be developed for expatriate workers and those residing in the Territory for a period of twenty (20) years or more, without gaining status, to be able to do so. These persons had the opportunity to apply for Residence and Belonger Status, or Belonger Status only depending on their preexisting qualifiers

2) The Clear Path to Regularisation: Residency and Belonger Status Programme, is a special project initiated and driven by the Premier, and does not require a deliberation of the Board of Immigration for applications received but is approved by Cabinet's discretion as stated within the Act. The process specifically requires applicants to submit their application and make payment upfront, complete a written exam, and submit all of the same documentation that persons would have originally submitted through the normal process at the Immigration Department. Some documents include a Birth Paper, Bank Reference, Personal Reference Letters, Academic Certificate, Job Letter, etc. Following the receipt of completed forms, documents and payments, persons were profiled for submission to Cabinet. A profile of each applicant is attached as **Appendix B** for Cabinet's deliberation

3) Under this expedited process, a timeline of three (3) weeks was allotted to allow persons to submit the required forms and documents. Applicants were required to pay upon submission of all applications a fee of eight hundred and ten dollars (\$810.00).

Purpose

4) To allow for persons who have resided within the Territory for a period exceeding twenty (20) years to become regularized by obtaining Belonger Status.

Cross-Ministry Consultation

5) The nature of this paper does not require cross-ministry consultation.

Financial Implications

6) There is no mention as to the aggregate sum of revenue that would be generated from the change in immigration status process in the Cabinet memorandum. Also, there was no indication of the loss in public revenue upon granting of the new immigration status. Cabinet must be made aware of the potential value of revenue to be derived from the process and that which would be lost should they approve the decision sought.

7) It is important to note, however, though there will be some loss of revenue to Government, the assumption is that the contribution of the applicants to the Territory in other forms such as investment in property and business over time far outweigh the loss of revenue from work permit and other immigration fees.

Legal Implications

8) As requested, we have reviewed the Cabinet Paper and advise that we have discerned no adverse legal implications which would arise for Government if Cabinet were to decide in accordance with the Decision Sought.

9) Please revert to Chambers if you require any further assistance.

Communication Strategy

10) All persons applying for Belonger Status will be notified of a ceremony to collect all certificates and cards following Cabinets approval.

Conclusion

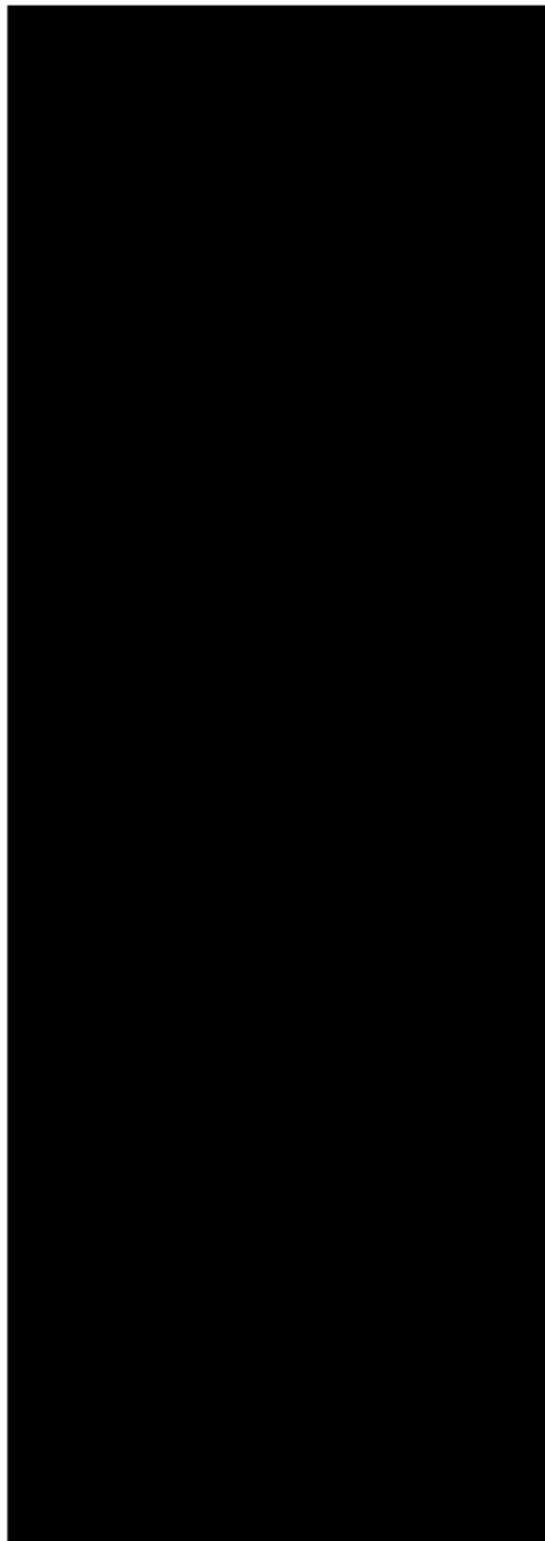
11) Members are asked to consider and concur with the decision sought.

Decision Sought

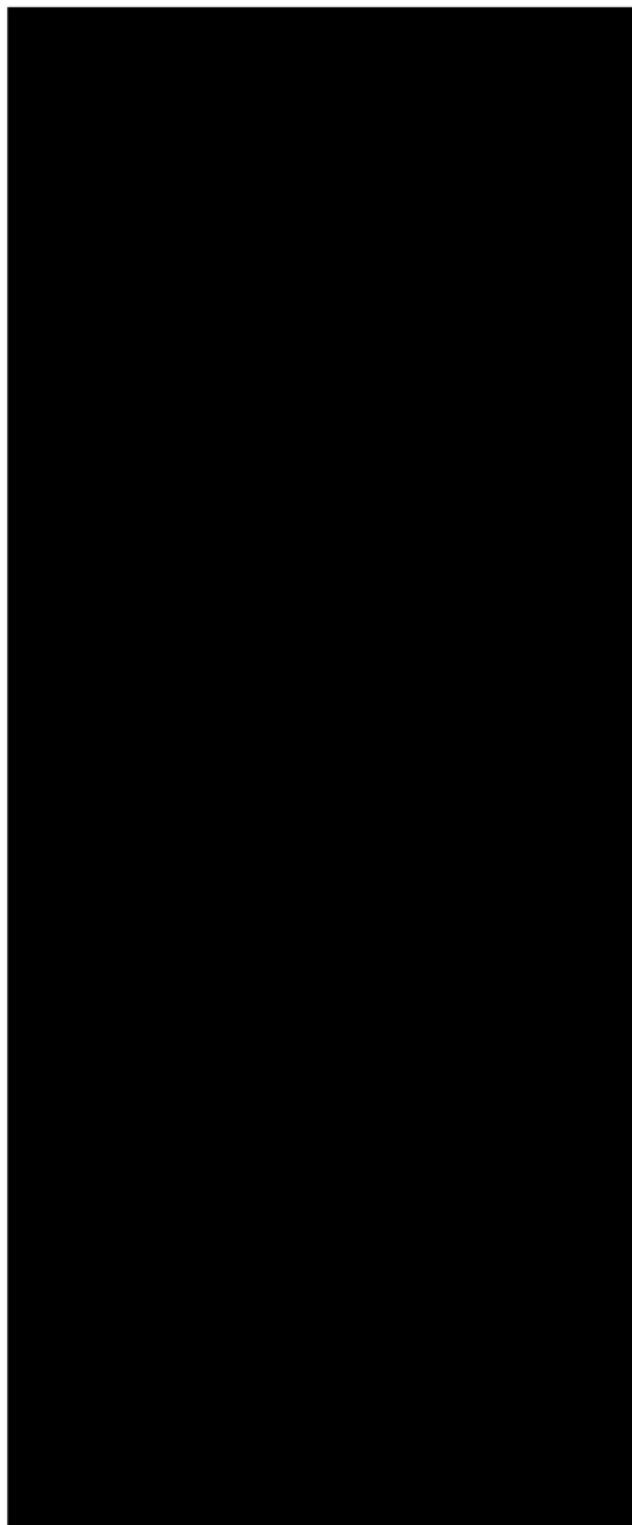
Cabinet is invited to:

- a. review and approve the recommendations in respect of applicants for Certificates of Belonger Status under the Clear Path to Regularisation: Residency and Belonger Status Programme;
- b. accept the recommendations of the Immigration Department to grant Certificates of Belonger Status to the following one hundred (100) applicants, who, in the opinion of the Immigration Department, have met the legal requirements of Section 2 (4) of the Immigration and Passport (Amendment) Act, 2019:









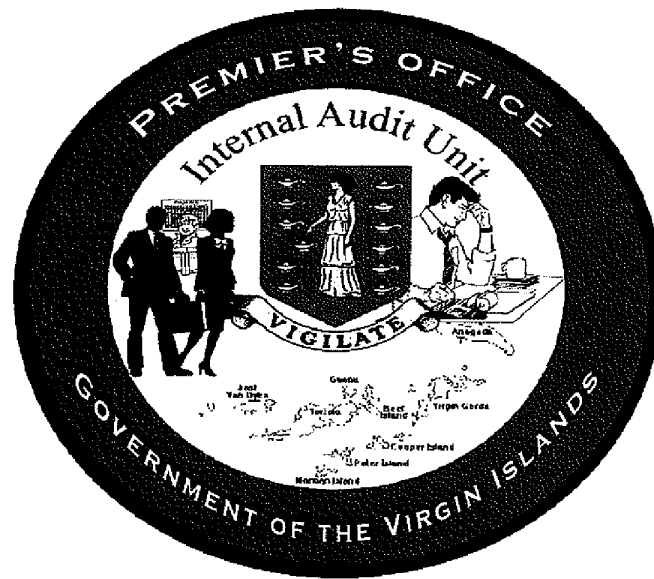




Recipients: Financial Secretary, MOF; Attorney General, AGC;

Hon. Vincent Wheatley
Minister for Natural
Resources, Labour and
Immigration
12 September 2019

Internal Audit Unit



Immigration Department Draft Audit Report 2009

July 2009

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Conclusion	11

Executive Summary

- 1.1 The Immigration Department Headquarters division requires three (3) staff members in order to maximize its operational activities at the general processing area specifically two (2) senior level and two (2) junior level staff.
- 1.2 The management of files needs urgent improvement.
- 1.3 It is uncertain the date when relocation of the department will be started and completed. Currently, two leases are being paid for two separate buildings.
- 1.4 Overcrowding is a great problem in the reception area due to limited space and the refusal of cooperation of the Labour Department.
- 1.5 Immigration Officers are very knowledgeable of their job as they relay information to customers.
- 1.6 Customers are handled with professionalism based on observations and interviews conducted with customers by the Audit Team.
- 1.7 The department processes well over one hundred customers on a busy day; and customers are handled with expediency as observed during a four day period.
- 1.8 Officers are not required to learn a foreign language despite the high number of foreign language speakers requiring service.
- 1.9 Access to critical areas of the department is too easy.
- 1.10 There is no officer in the department assigned the duty of training officer.

Introduction

- 2.1 The Immigration Department provides a regulatory service for persons wishing to reside in the territory of the Virgin Islands for employment, visitation or just living with family. Such a service is required to be efficient, effective and professionally managed. Due to the importance of this service, the Office of the Premier requested an audit of this department to address specific concerns and provide assurance that the intended service is being delivered professionally.

Audit Type

- 3.1 Operational

Audit Scope

- 4.1 Current Operations of Headquarters

Audit Objectives

- 5.1 To review daily operational services compliance.
- 5.2 To evaluate the associated risks.
- 5.3 To assure equity and due professional care.
- 5.4 To verify that service delivery is efficient and effective.

Prior Audit

- 6.1 In July 1999, the Internal Audit Unit conducted an operational audit at the department.

Audit Findings

Administration

- 7.1 It was agreed by all staff members interviewed that the department needs one (1) or two (2) more officers to handle the file area and assist with processing customers.
- 7.2 The file room was observed to be over crowded and in need of additional storage.
- 7.3 Currently the Clerical Officer has the responsibility for file management. It was the sentiment that a more senior officer needs to be responsible for the file management.
- 7.4 It was stated that there is a degree of difficulty in tracking the whereabouts of files when they are sent to the administration section of headquarters. An adequate file management system is not in place. This takes up a lot of time when the file is needed to process a customer.

- 7.5 The busiest days at the department are Mondays to Wednesdays due to changes in specific service days at the Labour Department.
- 7.6 Some officers felt that more public awareness of immigration services should be done via pamphlets, TV advertisements and radio advertisements.
- 7.7 No manual with written instructions for the Immigration Officers exist for executing specific services.
- 7.8 Officers felt that they are given the autonomy to make decisions within their level of responsibility.
- 7.9 A copy of the mission and vision statement was clearly visible on walls where customers could see and understand the purpose of the department.
- 7.10 There is signage with important information posted on walls; however no signs were done in Spanish or French.

Customer Service

- 7.11 The Processing Unit of the Immigration Department consist of three (3) Junior Immigrations Officers on the frontline receiving documents from customers which are reviewed for the requirements; then they are handed over to one of the three (3) Senior Immigration Officers for approval or further review. There is also the Assistant Chief Immigration Officer who manages these officers.
- 7.12 The junior officers also serve as cashiers, which can at times cause a delay in servicing the next customer.
- 7.13 It was mentioned that keyboarding development skills training is needed by some officers because of slow processing of customers.
- 7.14 The Immigration Department has a computerized system for processing persons entering into the territory called ENTREX. It was mentioned by officers that this system is not being fully utilized as it should.
- 7.15 Also noted with ENTREX was that it is not linked at all ports; meaning that if a person was refused entry at one port the information is not electronically available at other ports.
- 7.16 A System Administrator post, which is needed to service the computer system programs and department website, is not filled, as the past administrator left.
- 7.17 The Audit Unit conducted four (4) days of observations at the Immigration department and noted the following:

- 7.17.1 A need to relocate the department is urgent (a location has been found and a lease agreement is in place, however no date has been set for a move and negotiations are in progress for outfitting the space).
- 7.17.2 The reception area is often over-crowded due to the fact that it is also used by persons waiting for Labour Department. These patrons often have to stand blocking other patrons waiting for services. This is due in part to Labour Department's additional reception area not being open until a later time. It was stated that the Labour Department was asked to open their waiting area earlier but they denied the request.
- 7.17.3 Some customers are dressed inappropriately for the purpose of conducting business at a government institution.
- 7.17.4 The reception area needs to be thoroughly cleaned including the blinds which are very dirty. Some blinds by the entrance section are severely damaged and need to be removed and replaced.
- 7.17.5 The PA system does not work properly, which seems to be due to a shortage in the wiring system and due to only having one (1) speaker to cover a large area. The reception area can become a bit noisy due to multiple conversations and the television being played.
- 7.17.6 One junior officer understood and was able to speak a bit of Spanish to give instructions to a customer. There are a great number of customers who do not speak English and require a translator. It was observed on the first observation day that one bilingual person had to act as a translator for three (3) customers, as the Senior Immigration Officer does not speak Spanish. There is a need for officers to learn to communicate in other languages so that they can be absolutely sure that information is properly passed on to the customers.
- 7.17.7 It was noted that some customers had to make several appearances to the service area and to be interviewed by the Senior Officers. As expected this caused a bit of frustration on customers. (Customers were interviewed while they awaited service).
- 7.17.8 It was observed on the first day that seventy (70) customers were served, compared to fifty-seven (57) customers being served from 9:30 am to 12:00 pm on day two (2) of observation.

- 7.17.9 Processing window allows for customers to speak directly into officers' faces which at times may be uncomfortable. No amplification system is attached to these windows. There are a total of three (3) processing windows.
- 7.17.10 A slower period exists between 11:45 am to 1:20 pm on the days of observations.
- 7.17.11 **The access door between the service window area and the offices for senior officers has no secure access system and is kept unlocked at all times during service hours, which gives customers unrestricted access to officers.**
- 7.17.12 Persons living Virgin Gorda have to be processed there rather than in Road Town.
- 7.17.13 It was noted that some persons come in to Immigration to have their time extended ahead of the expiration time; however, this can't be done for work permits renewals only for the purpose of visitation extension.
- 7.17.14 Immigration Officers are not required to wear name tags which would assist customers in identifying an officer when referring to another officer.
- 7.17.15 The debit/credit card machine has been out of service for at least a period of two (2) years.
- 7.17.16 Officers at the service window asked important questions that would avoid customers having to return several times to the department.
- 7.17.17 Occasionally officers would come out to the lobby and check the number pull machine then return inside to advance the digital display number.
- 7.17.18 Service windows are not numbered therefore officers can't page them over the PA system to a specific window.
- 7.17.19 There is no receptionist available to ensure that customers have all the necessary documentation available before they see the Immigration Officer at the service window.
- 7.17.20 Interviews were conducted with customers and they had the following sentiments:

- 7.17.20.1 More lobby space is needed, customers at times have to pull a number then go outside to wait and there is no speaker outside the lobby so customers won't hear their name called.
- 7.17.20.2 More frontline officers needed at the service windows that are customer oriented.
- 7.17.20.3 Continual use of appointment system should be considered.
- 7.17.20.4 A Security Officer should be stationed within the department.
- 7.17.20.5 Customers felt that the Assistant Chief Immigration Officer is a very fair person.
- 7.17.20.6 Customers complained about the noise in the lobby area from the television and chatter.
- 7.17.20.7 Complaints were made about officers not returning customers' calls when they left a message.
- 7.17.20.8 Some customers claim that Immigration Officers are impatient while on the other hand others stated that they had a good experience.

Concerns by Management

- 8.1 Management stated that no training budget exist although attempts were made to obtain funds for such.
- 8.2 Management has identified a need for officers to learn foreign languages. They have on occasion offered services in teaching other languages that they know but cited a lack of interest on some officers; however management's sentiment is that speaking a foreign language should be a requirement of becoming an Immigration Officer.
- 8.3 Typing and report writing skills are other areas where training is required; particularly for officers could be applied to at ports of entry where typing skills increases efficiency of processing passengers.
- 8.4 Concern was given over the fact that rent is being paid for two (2) office spaces, as the new site for relocation is not ready as yet.

- 8.5 The management is of the opinion that a Senior Officer or experienced personnel needs to be assigned to management of the file system.
- 8.6 Management also noted that at times decisions made by officers within the department have been met with objection by Ministers of government and been ordered to change them. Complaints are made by the customers to the requisite authority to have decisions made in their favour contrary to Immigration rules.
- 8.7 A need for a Public Relations Officer is seen as critical to the department.
- 8.8 A designated Training Officer is not available in the department; however management sees a need for such.
- 8.9 No information booth or kiosk is available in the department.
- 8.10 A designated cashier is not available and Immigration Officers provide this service; however management deems that a cashier should be given to the department.
- 8.11 Officers interviewed stated that the computer systems being used were efficient in terms of response times.
- 8.12 Comment cards for customers to log their sentiments were made available at one point but have not been restocked after they were depleted.

Audit Recommendation

- 9.1 A new deadline should be set for relocation of the Immigration Office and that date met. *Management agreed that immediate follow-up on the status of the relocation plans will be done.*
- 9.2 A Senior File Management Clerk should be hired to manage and organize a system of file tracking and file building and maintenance. *An effort would be made to have this staff in place within 6 months.*
- 9.3 Additional Senior and Junior Officers should be added to the front office to assist with customers, especially on the busiest days of the week. *Management agreed that a senior officer is more suited to fill a position as a relief officer at outstations and perform services in the residency/belonger status areas.*
- 9.4 An operational manual with instructions should be compiled for reference by officers and for purpose of record.
- 9.5 A designated cashier to handle cashiering services should be hired so that frontline officer can dedicate more time to their other duties and process customers more quickly. *Management agreed that they would immediately explore this option with the Treasury Department.*

- 9.6 An officer should be assigned the responsibility for quality of service as this is critical of the department desires to render continuous professional service. *Management has decided that supervisors will be relied on for such services.*
- 9.7 It is important that a designated training officer be activated to ensure that all officers are adequately and continuously trained to render professional service. *Management agreed that in the interim seniors will continue to provide training until a training officer is selected*
- 9.8 Training in foreign languages should become a part of the requirement for being an Immigration Officer; or incorporated into some system of promotion incentive for Senior Immigration Officers. *Management would like to see foreign language become a part of requirements for becoming an Immigration Officer. Enquiries would be made immediately into possibility of having courses taught to officers.*
- 9.9 Officers should ensure that they enunciate the names of persons correctly, especially those that don't speak English, so that the customer understands that they are being called.
- 9.10 The post of Systems Administrator should be filled immediately to ensure that continuous maintenance and upgrades in the ENTREX and other systems are done. *Management has agreed to have this post filled within six (6) months. The post is in the budget; however the availability of funds determines whether post will be filled. (The department has been asked to cut back on spending in areas where they can).*
- 9.11 Liaise with the Labour Department in having them open their waiting area earlier to accelerate congestion. *Management will table this item for the agenda in a meeting with the Labour Department immediately*
- 9.12 A receptionist that is versed in immigration matters and requirements should be hired to avoid customers making several trips to the service window when they don't have the required documentation. *Due to the lack of space management decided to include this recommendation upon relocation.*
- 9.13 The PA (Public Address) system should be fixed in the interior so customers can clearly hear their name being called. A solution would be to add one or two additional speakers to address the situation. Consideration should be given to having on speaker placed immediately outside the lobby door to address the situation of persons waiting outside due to overcrowdings. *This will be immediately addressed by management and put in place if funds are available.*
- 9.14 Some signs should be printed in Spanish as the department processes a large number of Spanish speaking customers. *Management has promised to have such signs erected within 3 months if funding is available.*

- 9.15 In the design for the service area in the new location, management should ensure that a voice amplification system is incorporated. *Consideration will be given.*
- 9.16 Service windows should be identified by numbers to avoid any confusion on the customers' part. *Management agrees to put numbers in place immediately.*
- 9.17 Officers should consider wearing name badges and having name plates at their designated windows for ease of customer reference. *Management will check the availability of funding and proceed with implementation.*
- 9.18 **The access door to Senior Officers should have restricted access utilizing a buzzer door release system which would be controlled by the officers. Management has agreed to rectify this problem within (3) three months based on the availability of funding.**
- 9.19 The Debit/Credit card machine should be fixed immediately which provides quick access to cash in cases where more funds are required by customers. *Management will revisit this issue immediately as it was visited before but issue was not resolved by technicians at TSMU (Telephone Services Management Unit).*
- 9.20 A dress code should be established for customers along with the requisite signage which states the manner in which customer is required to dress in order to receive service.
- 9.21 Consideration should be given for changing the numbering system used to service customers to a fully electronic system.
- 9.22 Funding for training of Immigration officers must be given in order to achieve optimal performance.
- 9.23 Political Interference should cease and officers should be allowed to apply their decisions based on Immigration laws.
- 9.24 More public awareness shows such as Public Eye and other talk shows should be held in order to be satisfied that the department has done its best in educating the public of its procedures and requirements.

Conclusion

- 10.1 Immigration control services are vital aspect to the maintenance of order within out territory. It is this body that control who enter and reside within our borders. In order for it to be effective and continuously improved, the requisite resources must be afforded and not diminished. This exercise proved that this area of the department is a strong one and has a relatively high rate of efficiency despite of the growing volume and limited human resource to process such a need. Management and staff has agreed to and made some of the recommendations in this report. It is in the best interest of the government that they be afforded such reports.

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DATE: 7th April, 2011

M.P.: PO/I4/022 Vol. V

CABINET PAPER

No. 139/2011

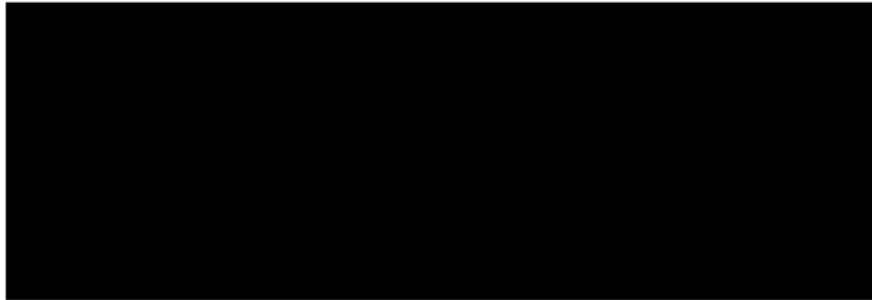
Applications for Belonger Status

Memorandum by the Premier

DECISION SOUGHT

Cabinet is asked to:

- (a) approve the granting of Belonger Status to the persons listed below in accordance with Section 16 of the Immigration and Passport (Amendment) Act (Cap. 130):



BACKGROUND INFORMATION

Section 16 of the Immigration and Passport Ordinance (Cap 130) provides that after consultation with the Board of Immigration, Cabinet may, upon application being made in the manner prescribed, grant a Certificate that a person belongs to the Territory for the purposes of the following Ordinance. The Board considered a total of 25 applicants for Belonger Status at meetings held on the following dates during 2009: 23rd July, 22nd October, 19th November and 3rd December. Of the twenty five (25) applicants, nineteen (19) were recommended, one (1) was deferred and five (5) were not recommended.

2. The applicants who were recommended are in the categories of spouses of belongers and holders of Certificate of Residence. The majority of the applicants are spouses of belongers and the remainder has obtained Residence Status.

3. The Board did not recommend five (5) applicants. Of the five, three (3) applicants did not meet the requirement under Section 16 (5) of the Immigration and Passport (Amendment) Act, 2000; one did not meet the requirement under Section 16 (4) of the Immigration and Passport Ordinance and its amendments and one applicant has to sort out her immigration status in the Territory. The minutes for the respective Board meetings are attached as **Appendix A**.

.....

Cross Ministry Coordination

4. None.

Legal Implications

5. The Attorney General Chambers via memorandum of 25th August, 2010 was asked to provide comments. To date no response has been received from them.

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Financial Implications

-
6. The Financial Secretary expressed other than lost revenues from work permit fees and other fees no known implications exists. The full comments are at **Appendix B**.
 7. Cabinet is asked to approve the granting of Belonger Status to the applicants listed in the Decision Sought.

Ralph T. O'Neal
Premier

Appendix A: Minutes of respective Board meetings

Appendix B: Financial Secretary's Comments

**CABINET PAPER RECORD & EXTRACT FROM THE MINUTES OF THE MEETING
OF THE VIRGIN ISLANDS CABINET HELD AT THE CONFERENCE ROOM
PREMIER'S OFFICE ON**

13TH APRIL, 2011

To: Premier

cc: Permanent Secretary, PO

Date: 27th April, 2011

Paper No. Memo No. 139/2011

Date Arrived in the Cabinet Office 7th April, 2011

Date Approved by the Cabinet Steering Group 7th April, 2011

Date Sent to Cabinet 13th April, 2011

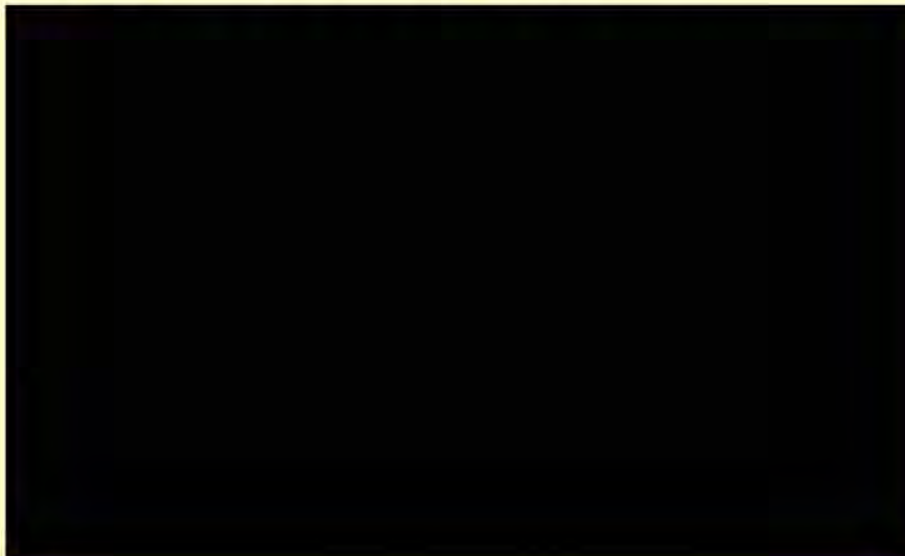
Cabinet Confirmation Date 20th April, 2011

Cabinet Extract:

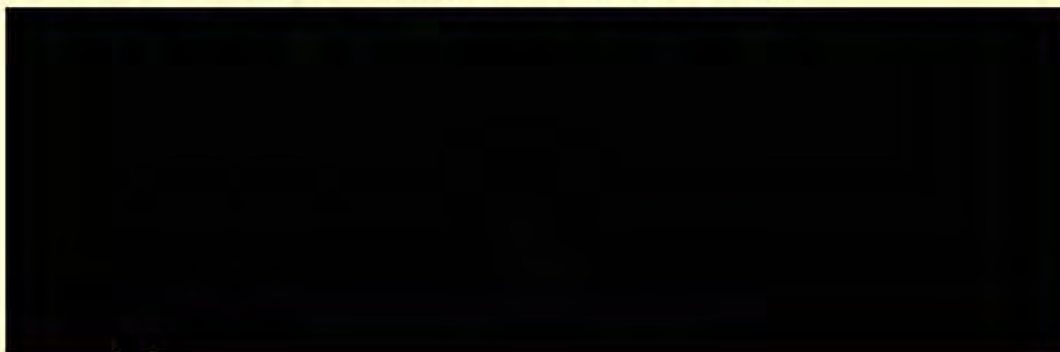
**Applications for Belonger Status
Memo No. 139/2011**

Cabinet:

- (a) noted the Ag. Attorney General's advice in respect of Cap. 130 section 16, and added the names of eligible persons to the list for Belonger Status as follows:



(b) approved the granting of Belonger Status to the persons listed below in accordance with Section 16 of the Immigration and Passport (Amendment) Act (Cap. 130):



Cabinet Secretary's Signature

Cabinet Secretary's Sign-off Date

Date Sent to Ministry

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DATE: 19th October, 2011

M.P.: I4/022

CABINET PAPER

No. 430/2011

Belonger Status

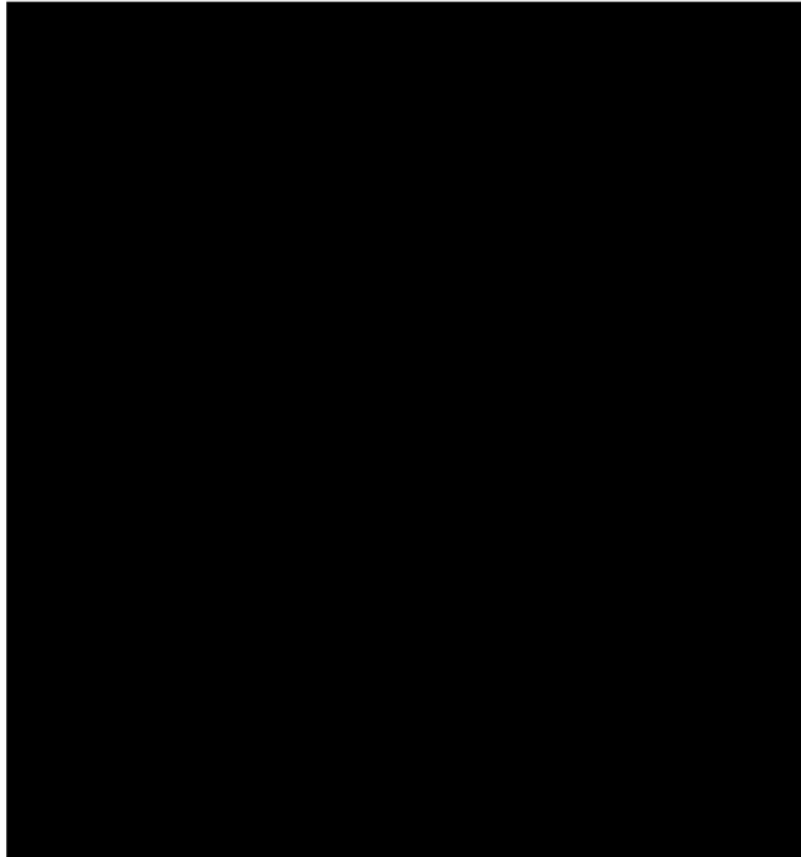
Memorandum by the Premier

DECISION SOUGHT

Cabinet is asked to decide that the following persons be granted Belonger Status in the Territory.

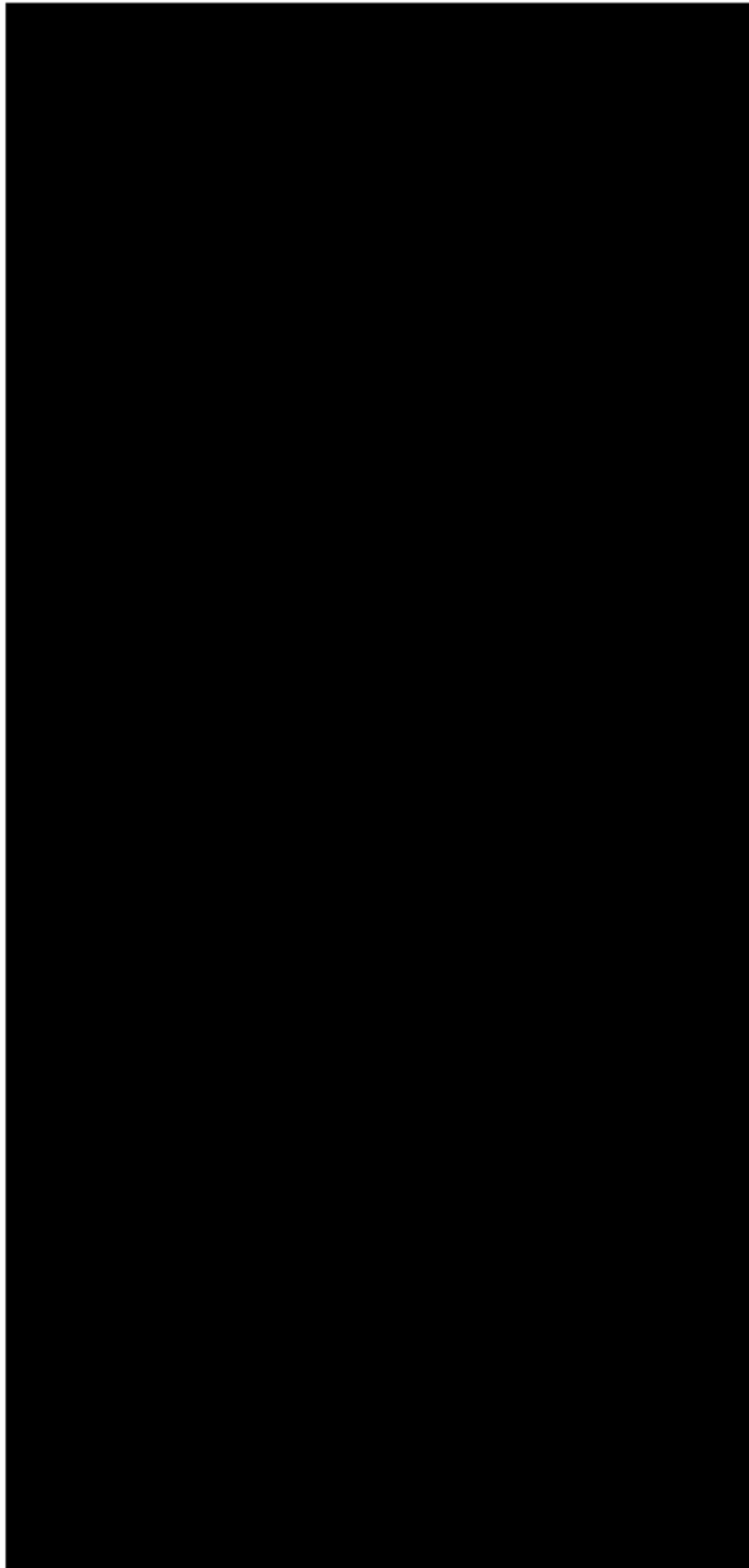
BACKGROUND INFORMATION

1. At the Cabinet meeting held on 28th September, 2011, it was agreed that the names of persons recommended for belongingship should form a separate paper and brought back to Cabinet for consideration. Each member of Cabinet would submit their names to the Premier who would of course be responsible for presenting the Cabinet Paper.
2. The list of names submitted are as follows:-

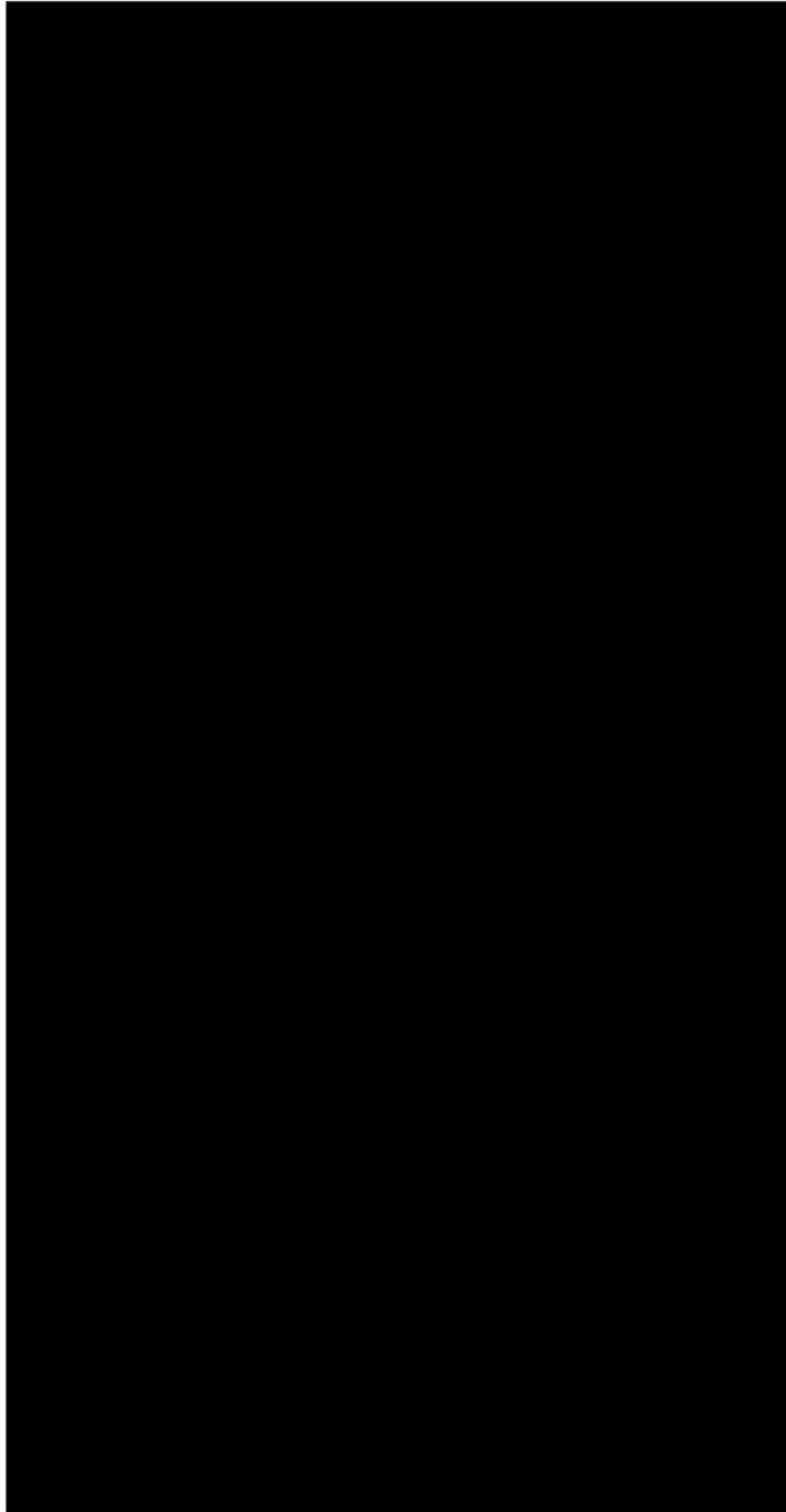


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CONCLUSION

21. The above named persons have lived in the Territory in some cases over thirty years (30), in some cases over twenty to twenty five years (20-25) and in other cases they have made their contributions to the Territory by practicing their professions for several years, and have no intention of leaving the Territory.

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22. After making such contributions to the Territory and adopting the British Virgin Islands as their home, it is only but fair that they be granted Belonger Status, having lived in peace with their neighbours and were never in any trouble with the law.
23. Cabinet is asked to agree to the recommendation.

Ralph T. O'Neal
Premier

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**CABINET PAPER RECORD & EXTRACT FROM THE MINUTES OF THE MEETING
OF THE VIRGIN ISLANDS CABINET HELD AT THE CONFERENCE ROOM
PREMIER'S OFFICE ON**

19TH OCTOBER, 2011

To: Premier

cc: Permanent Secretary, PO

Date: 1st November, 2011

Paper No. Memo No. 430/2011

Date Arrived in the Cabinet Office 19th October, 2011

Date Approved by the Cabinet Steering Group Late

Date Sent to Cabinet 19th October, 2011

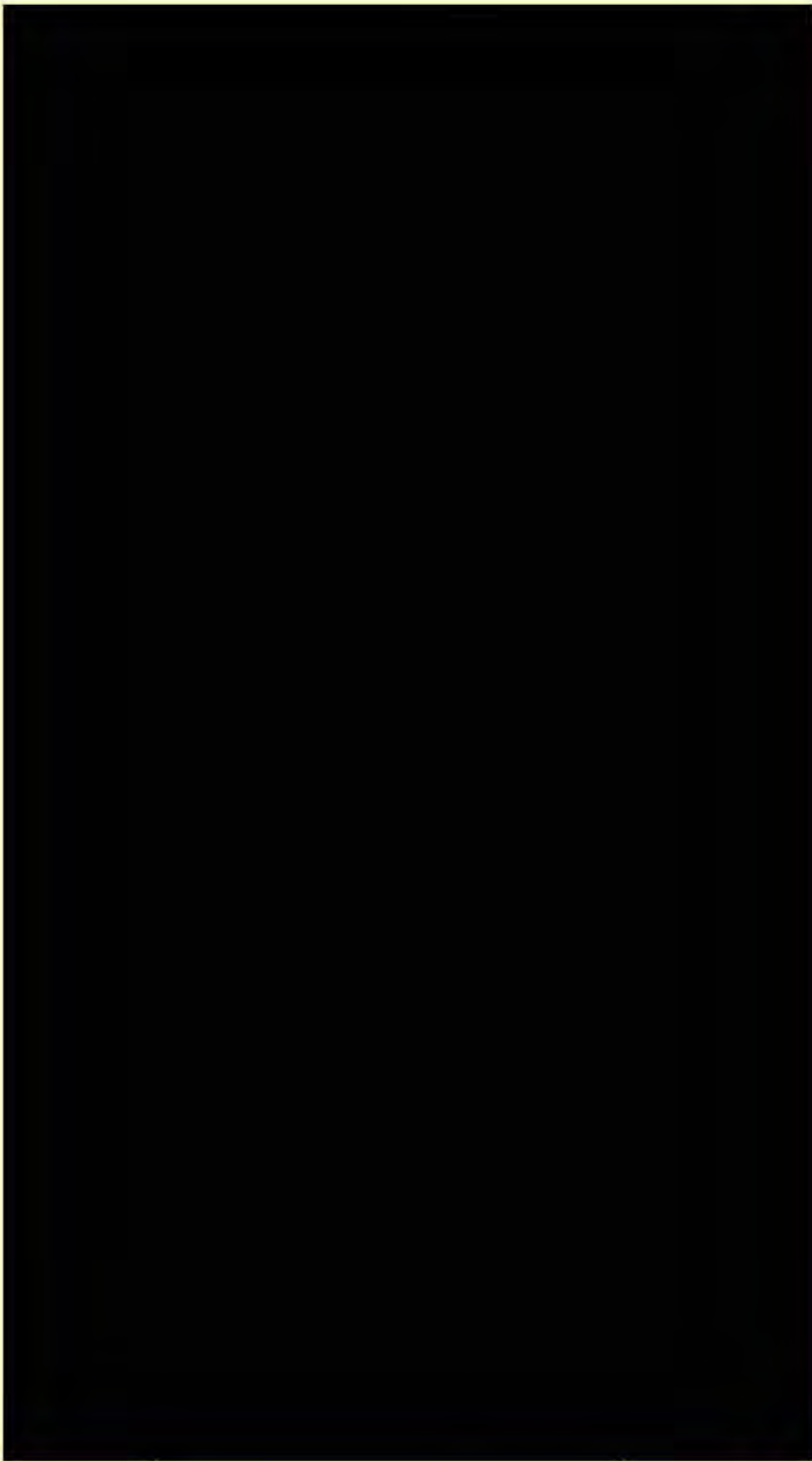
Cabinet Confirmation Date 26th October, 2011

Cabinet Extract:

**Belonger Status
Memo No. 430/2011**

2695. Cabinet decided that the following persons be granted Belonger Status in the Territory:







Cabinet Secretary's Signature

Cabinet Secretary's Sign-off Date

Date Sent to Ministry

Applications for Certificates of Residence and Belonger Status - (Immigration Regularization – Batch No. 04)

Signed

· 19 November 2019 · MNRLI · File: ADM. 1/112 · Ms. Nadia Demming-Hodge
· Memo No. 405/2019 · Extract No. REx/405/2019 (/decisions/115)

Background Information

1) On 3rd June, 2019, the House of Assembly passed a Bill entitled Immigration and Passport (Amendment) Act, 2019 (**see Appendix A**), which was assented to by the Ag. Governor on 12th June, 2019. Also attached at **Appendix A(i)** is the Immigration and Passport (Amendment) (No.2) Act, 2019 gazetted on 12th September, 2019 extending the sunset of these legislations to 1st February, 2020. These amendments allowed for a special fast track process to be developed for those residing in the Territory for a period of twenty (20) years or more, without gaining status, to be able to do so. These persons had the opportunity to apply for Residence and Belonger Status, or Belonger Status only depending on their preexisting qualifiers.

2) Under this expedited process, a timeline of three (3) weeks was allotted to allow persons to submit the required forms and documents. The time within which persons were eligible to apply ended on 16th August, 2019. Applicants were required to pay upon submission of all applications a fee of one thousand five hundred and ten dollars (\$1,510.00) for Residence & Belonger Status.

3) The Clear Path to Regularisation: Residency and Belonger Status Programme, is a special project initiated and driven by the Honorable Premier, and does not require a deliberation of the Board of Immigration for applications received, but is approved by Cabinet pursuant to the Act. The process specifically required applicants to submit their application and make payment upfront, complete a

written exam, and submit all of the same documentation that persons would have originally submitted through the normal process at the Immigration Department. Following the receipt of completed forms, documents and payments, persons were profiled for submission to Cabinet. A profile of each applicant which summarizes the application of each applicant is attached as **Appendix B** for Cabinet's deliberation. It should be noted that full applications are available at the Department of Immigration if Cabinet wishes to gather further information on each applicant.

4) Cabinet should further note that though the BVI Government will see some loss as it relates to revenue generated through work permits from the persons listed within the Decision Sought, while being mindful that significant revenue has been generated through the fees, that each person has paid to be awarded these statuses. Furthermore, contribution will be derived through differing forms, such as investments in local property and homes, contributions to society and communities, and business ventures just to name a few will far surpass the loss of revenue from work permits and related fees.

Purpose

5) To allow for persons who have resided within the Territory for a period exceeding twenty (20) years to be granted Residence and Belonger Status.

Cross-Ministry Consultation

6) The nature of this paper does not require cross-ministry consultation.

Financial Implications

7) An aggregate of \$151,000 was paid into the coffers of the Government of the Virgin Islands by these applicants.

8) Based on the decision sought there will be a decrease of revenues in the areas of work permit and immigration fees going forward. However, the assumption is that these applicants will make positive contributions in other areas that will impact the economic growth of this Territory.

Legal Implications

9) We have reviewed the draft paper and have discerned no adverse legal implications which would arise for Government if Cabinet is minded to decide in accordance with the decision sought.

Communication Strategy

10) All persons applying for Residence and Belonger Status will be notified of a ceremony to collect all certificates and cards following Cabinet's approval.

Conclusion

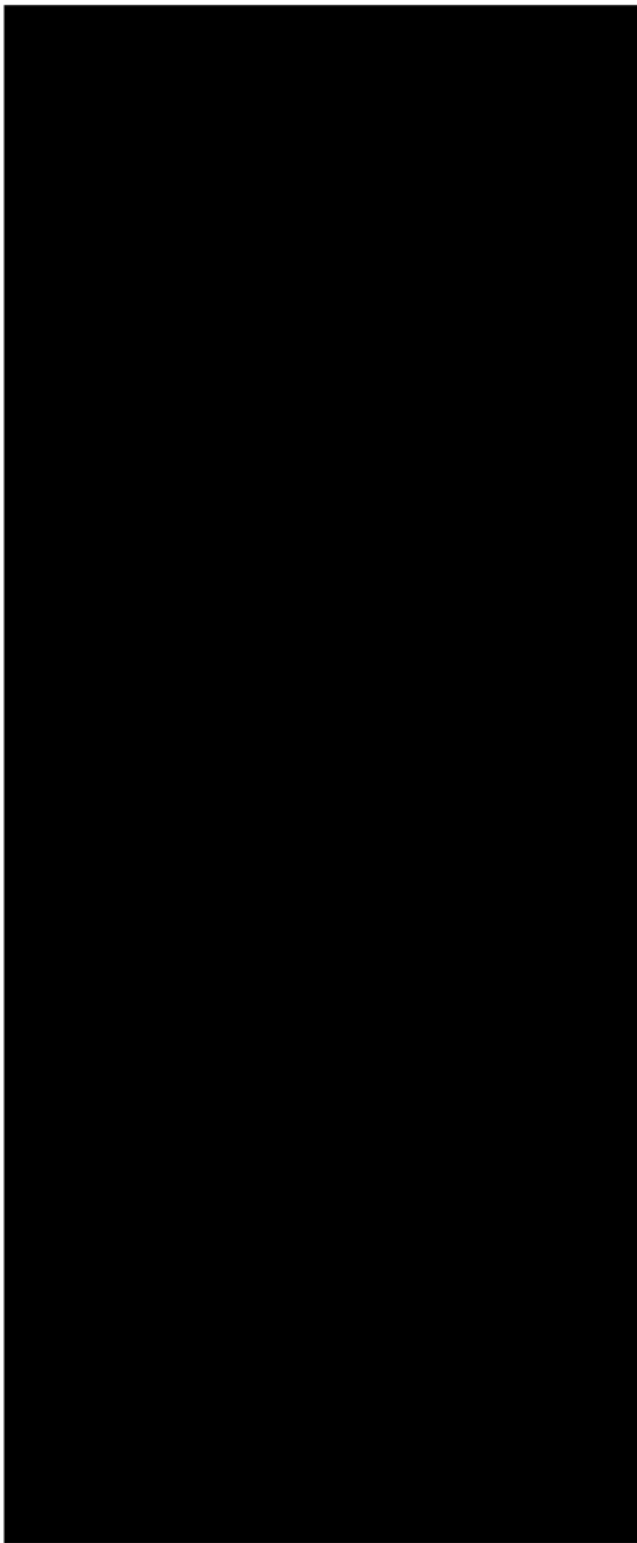
11) Members are asked to concur with the decision sought.

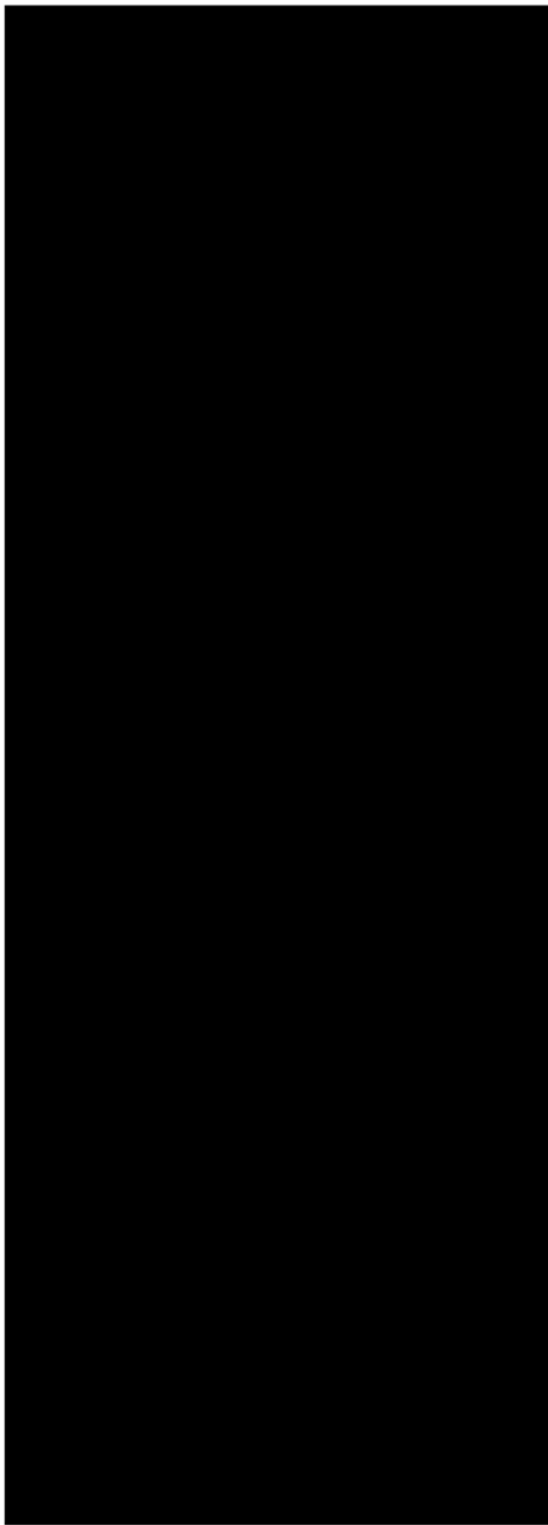
Decision Sought

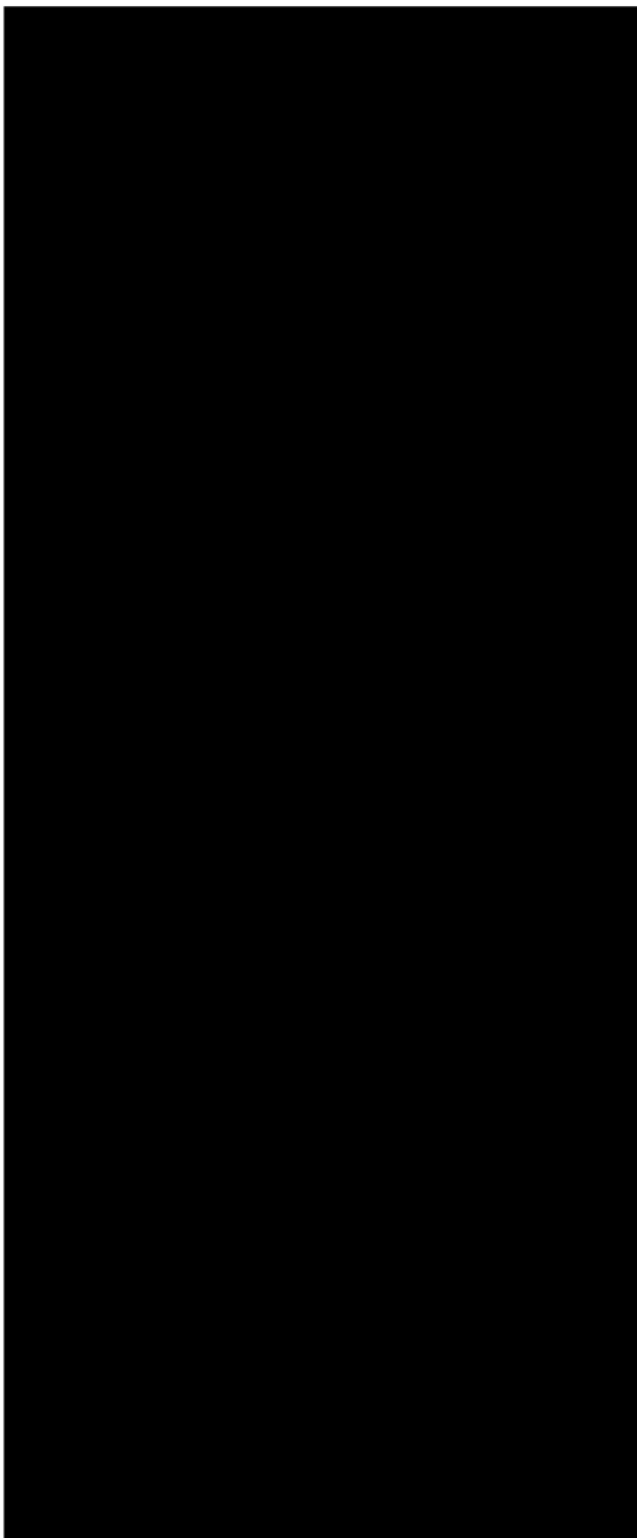
Cabinet is invited to:

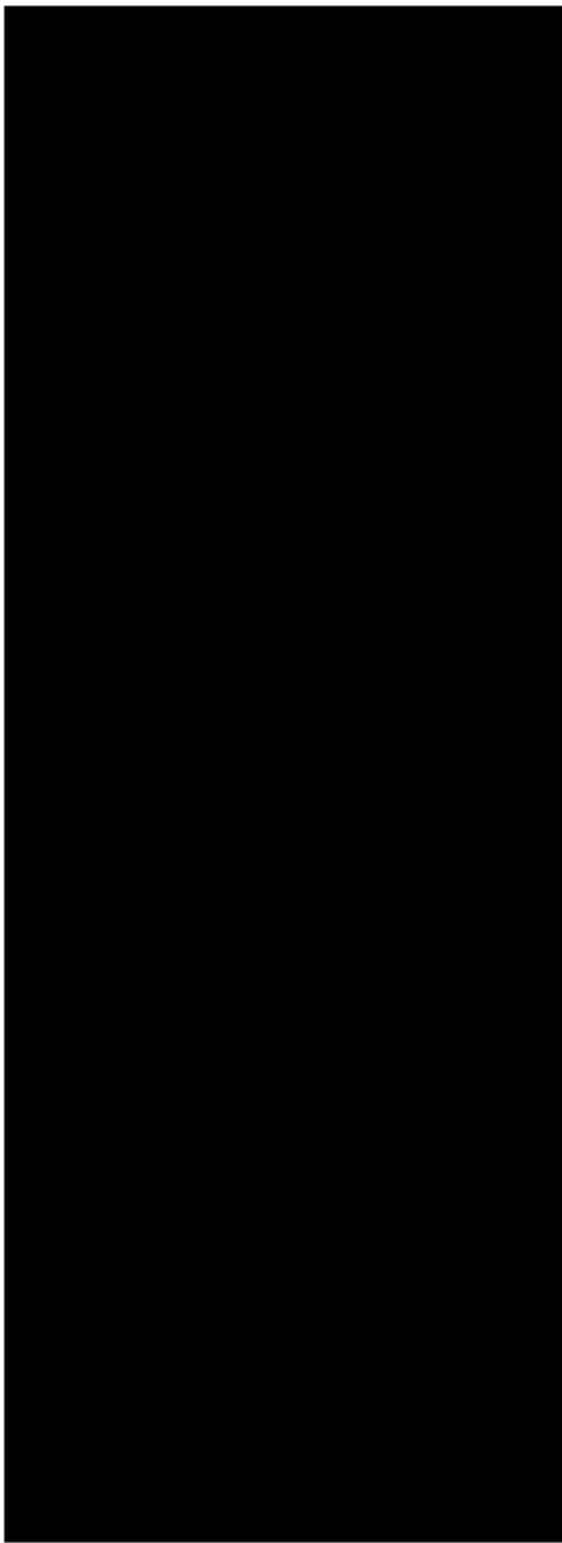
- a. review and approve the grant of Certificates of Residence and Belonger Status to the following one hundred (100) applicants, who, have met the legal requirements of Section 2 (4) and Section 3 of the Immigration and Passport Amendment Act, 2019:

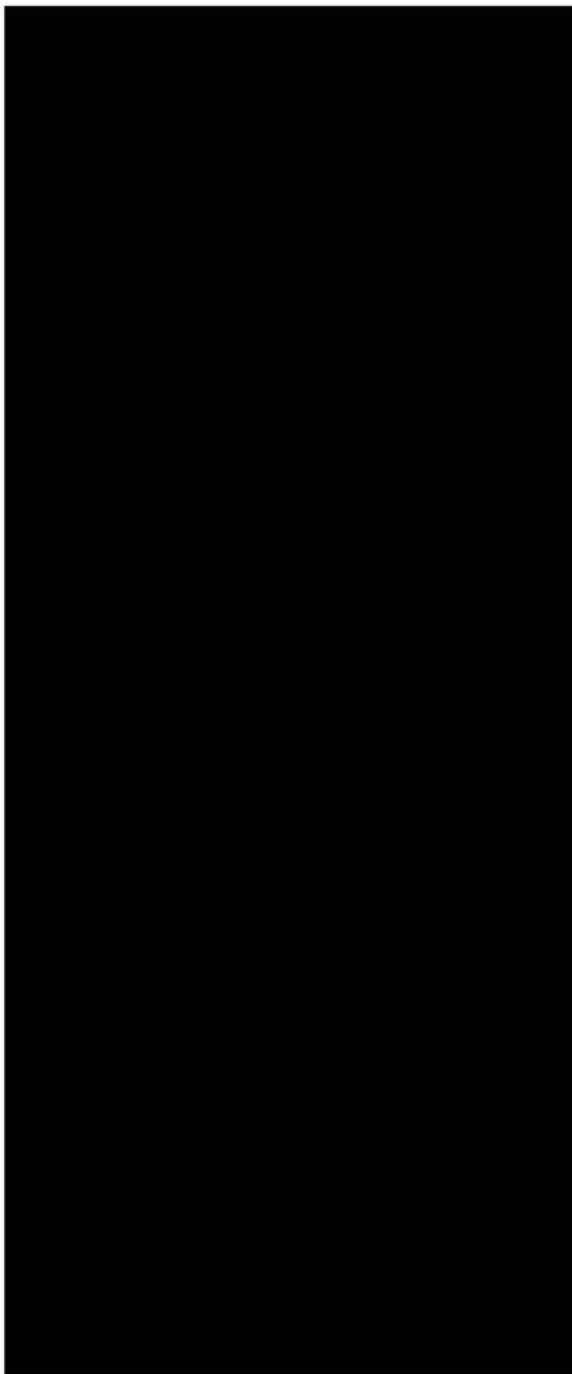












b. decide that a Ceremony be held to confer Belonger Status on the approved applicants.

Recipients: Financial Secretary, MOF; Attorney General, AGC;

Hon. Vincent Wheatley
Minister for Natural
Resources, Labour and
Immigration
21 November 2019

CABINET MEETING NO. 32 OF 2019

Published

22 November 2019

Premier's Conference Room, Road Town

Agenda No: [C/2/AGEN/37/2019](#)

Present

Acting Governor and Chairman	Mrs. Rosalie Adams
Premier and Minister of Finance	Hon. Andrew A. Fahie
Minister for Natural Resources, Labour and Immigration	Hon. Vincent Wheatley
Minister for Health and Social Development	Hon. Carvin Malone
Attorney General	Hon. Baba Aziz

Absent

Annual leave	The Governor	H. E. Augustus J. U. Jaspert
Official Overseas Business	Minister for Transportation, Works and Utilities	Hon. Kye Rymer
Official Overseas Business	Minister for Education, Culture, Youth Affairs, Fisheries and Agriculture	Dr. the Hon. Natalio Wheatley

Cabinet Officials

Cabinet Secretary	Ms. Sandra Ward
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Commencement and Opening Prayer

The Chairman called the meeting to order at 8:48am. The prayer was said by the Deputy Premier and Minister for Natural Resources, Labour and Immigration.

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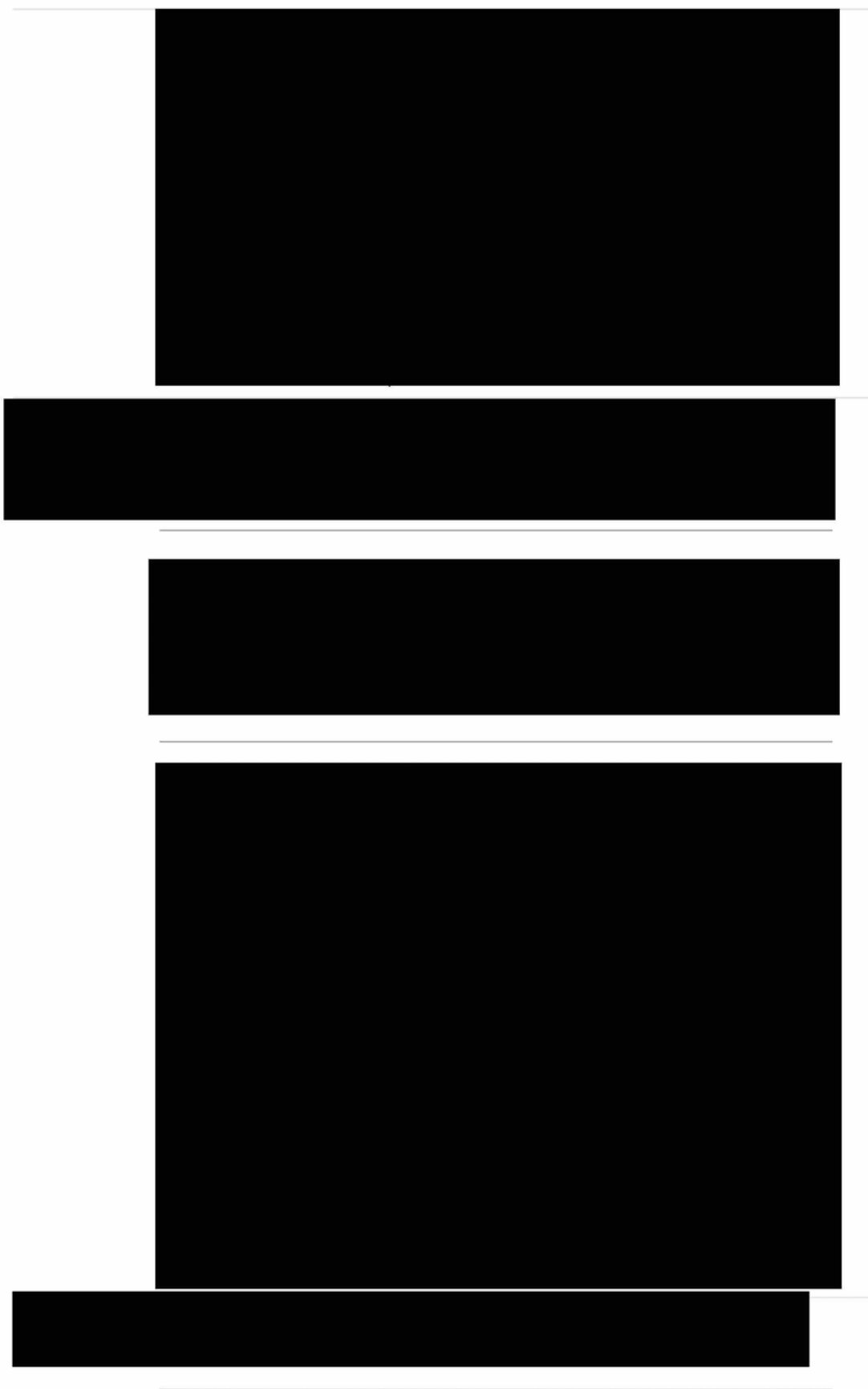
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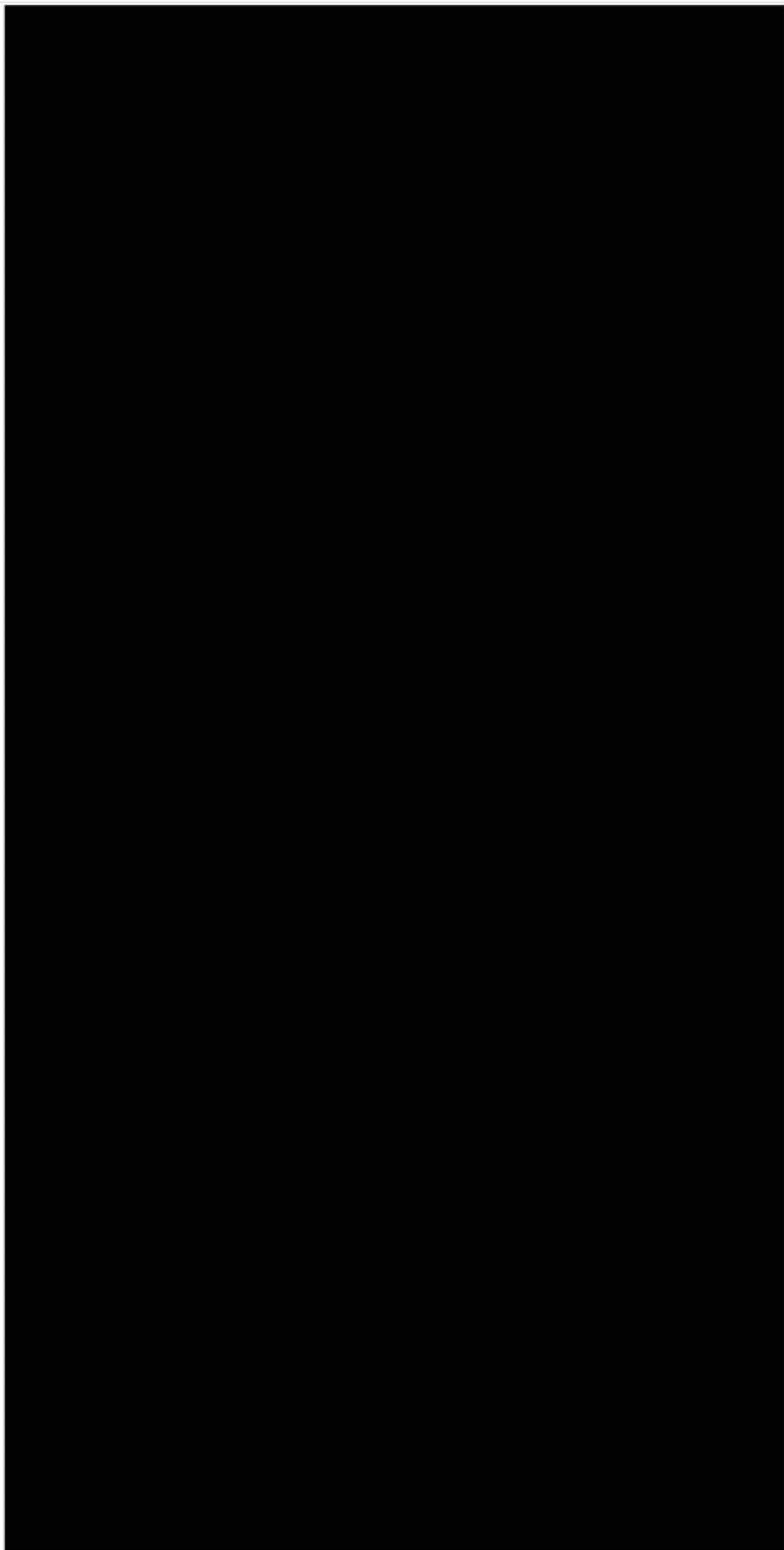
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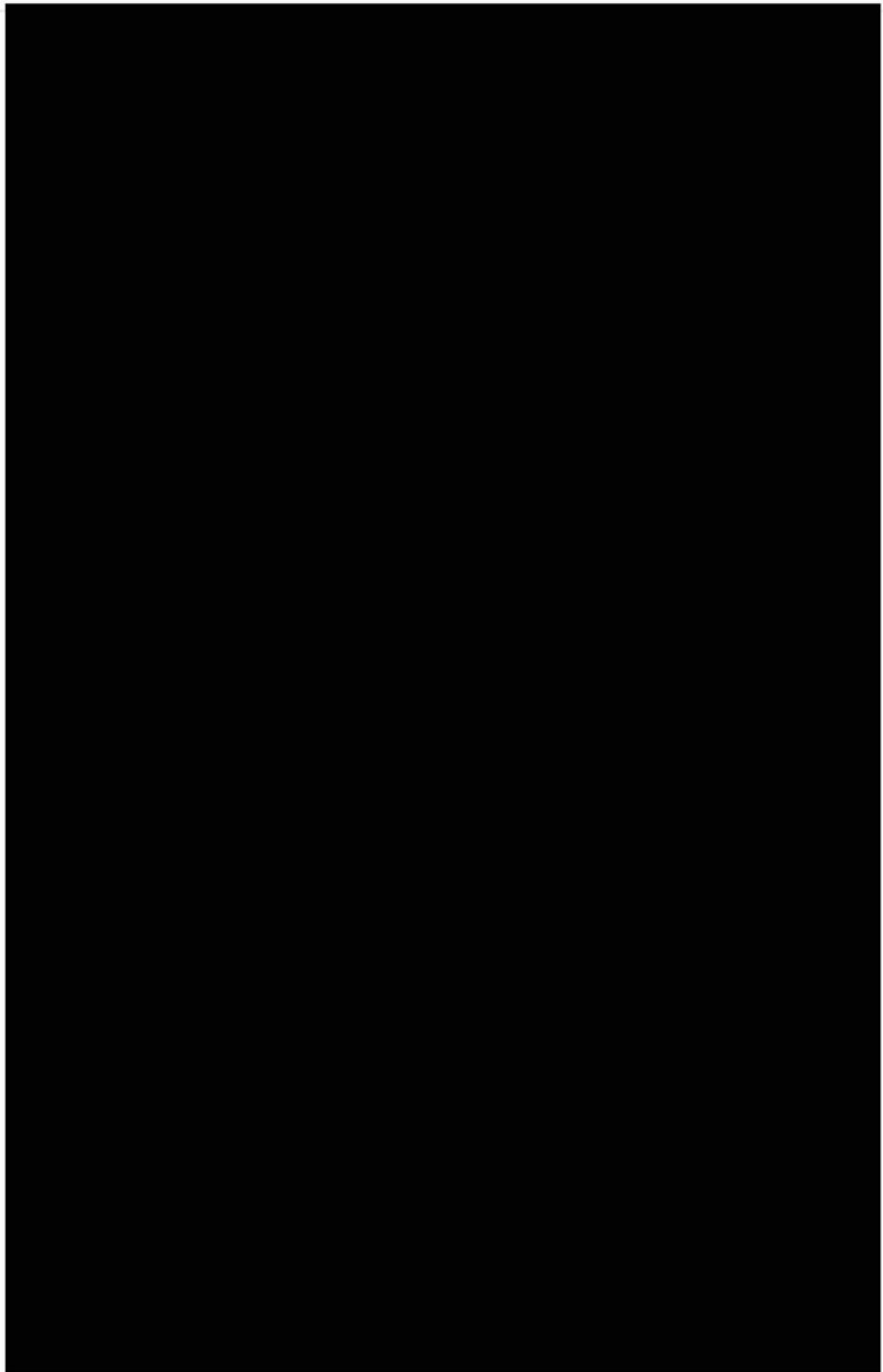
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Deliberations

21. The Minister of Finance presented this paper.

22. The Acting Governor asked about the concerns expressed by the Financial Secretary that Grace Consulting's duties would overlap with their mandate to recommend revenue generating initiatives. The Minister of Finance said he had discussed this concern with the Financial Secretary, who subsequently agreed to Grace Consulting's role given the Ministry of Finance's current overload. Additionally, the Acting Governor asked about the Attorney General's comments with respect to waiving the tender process. The AG referenced his correspondence of 25th October, 2019, which is attached as Appendix C, would be his standard comments in such matters when the tender process is waived.

23. The Acting Governor stated that going forward the standard should be to avoid waiving the tender process but only in exceptional cases.

24. The Minister for NRL and Immigration commented that it was critical to increase revenue to assist in ensuring that public officers salary was commensurate with the standard of living. He said that the Government cannot attract qualified people with its current salary scales. The Minister expressed his full support for revenue initiatives to help with the economy.

25. The Minister for Health and Social Development said this year he had a much better appreciation of the Standing Finance Committee deliberations. When one considers the ability to take the loans needed to repair the Multi-sports Complex and the Hon. Ralph T. O'Neal, OBE Administration Complex, one has to be tempered in one's approach. There must be evidence that one can repay loans, but if one takes on too much and insufficient revenue is generated, then one would be subject to other conditions such as reducing the public service. There must be a move to introducing revenue generating initiatives.

26. The Premier and Minister of Finance stated that he was happy that one of the conditions in the Grace Consultancy measurable condition was associated with this contract.

27. The Acting Governor commented that the required regular reports to be submitted by Grace Consultancy, offer a chance to determine whether the consultancy is working or not.

Decision Sought

28. Cabinet:

- a. decided on a new contract between Grace Consulting and the Government of the Virgin Islands for twelve (12) months with effect from 18th September 2019

to 17th August 2020 as per attached draft contract;

- b. approved the request for waiver of the tender process in favour of Grace Consulting, that is deemed to be a suitable company having successfully executed deliverables in a just concluded contract and provided evidence of the same;
- c. approved Grace Consulting fee at the rate of twelve thousand dollars (\$12,000) per month in accordance with the draft contract, and to be payable periodically upon presentation of invoices, and accompanied with status reports of the deliverables under the consultancy;
- d. noted that the deliverables being sought from Grace Consulting are functions under the remit of the Ministry of Finance, but in this regard that even though the consultant will be reporting to the Premier, copies of reports should be furnished to the Financial Secretary;
- e. noted that the cost for services to be provided by Grace Consulting shall be charged to **22204090 Premier's Policy Planning & Administration - 528299 Consultancy**; and
- f. decided that an expedited extract to allow the decision of the Cabinet to be acted upon before the confirmation of the Minutes.

REx/396/2019 Memorandum - NO. 396/2019 - BY MINISTER FOR NATURAL RESOURCES, LABOUR AND IMMIGRATION - Application to lease Parcel 310 of Block 2938B, Road Town Registration Section – Bevis Sylvester

Deliberations

29.The Minister for Natural Resources, Labour and Immigration presented this paper.

Decision Sought

30.Cabinet decided:

- a. that the decision recorded by Minute No. 0927 of Memo No. 490/2007 be revoked in its entirety;
- b. that Parcel 310 of Block 2938B in the Road Town Registration Section which measures 0.526 of an acre as evidenced by a copy of the Land Register be granted to Mr. Bevis Sylvester for Commercial purposes;
- c. that the Grant of Easement given to the Crown by Garvin Ishmel Stoutt Sr. by Instrument No. 1068 of 2007, dated 25th July, 2017, to remain as this will provide access to Parcel 310 of the said block and registration section;
- d. that the instrument of lease be prepared by the Ministry and forwarded for vetting to the Attorney; and
- e. that the terms of the Lease to be as follows:
 - i. Term – Fifty (50) years in the first instance with an option to renew for a further period of twenty-five (25) years
 - ii. Rent – \$800.00
 - iii. Rent Review Period – 5 percent of the unimproved value of the lease area
 - iv. Rent Cap – nil
 - v. Late Payment – 2 percent above the New York Prime Rate
 - vi. Period for – 30 days
 - vii. Payment:
 - 1. Subletting – 2.5 percent of rent collected from the sublease agreement in addition to the rent

2. Payment Due Date – 1 January each year

- f. decided that an expedited extract be issued to allow the decision of the Cabinet to be acted upon before the confirmation of the Minutes.

REx/404/2019 Memorandum - NO. 404/2019 - BY MINISTER FOR NATURAL RESOURCES, LABOUR AND IMMIGRATION - Applications for Belonger Status - (Immigration Regularization – Batch No. 06)

Deliberations

31. The Minister for Natural Resources, Labour and Immigration presented this paper.

Decision Sought

32. Cabinet:

- a. reviewed and approved the grant of Certificates of Belonger Status to the following one hundred (100) applicants, who, have met the legal requirements of Section 2 (4) and Section 3 of the Immigration and Passport Amendment Act, 2019:





33.b. decided that a Ceremony be held to confer Belonger Status on the approved applicant; and

34.c. decided that an expedited extract be issued to allow the decision of the Cabinet to be acted upon before the confirmation of the Minutes.

REx/405/2019

Memorandum - NO. 405/2019 - BY MINISTER FOR NATURAL RESOURCES,
LABOUR AND IMMIGRATION - Applications for Certificates of Residence and
Belonger Status - (Immigration Regularization – Batch No. 04)

Deliberations

35. The Minister for Natural Resources, Labour and Immigration presented this paper.

36. The Attorney General raised the issue of the applicant [REDACTED] who was currently imprisoned in New York and serving a 10-year sentence for rape.

37. The Premier responded that the applicant's parents had made representation and informed him that the U.S. Court had indicated that they would allow the applicant to serve out his sentence in the Territory. The Premier made it clear that he was not condoning the crime but that the BVI was the only place that the applicant knew.

38. The AG said that the Cabinet has discretion but as the Attorney General he has brought this matter to the Cabinet's attention that this is the status of the imprisoned applicant.

39. The Premier mentioned that there was another case involving [REDACTED] who would be applying for a similar consideration. [REDACTED] was not born in the Territory but had lived here for over 30 years.

40. The Chairman said while we want to be sympathetic to these persons, what was the plan for further rehabilitation for them. The Chairman stated that the BVI should not be a dumping ground for persons who did not behave in a good manner while overseas or considered a place that was a home for non law abiding citizens.

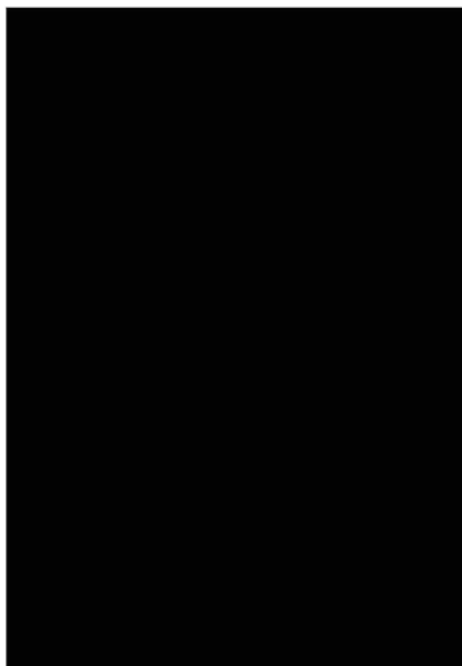
41. The Premier and his Ministers conferred on the matter and agreed that the applicant be deferred.

42. Cabinet decided on the 99 applicants but deferred approving the application for [REDACTED] for three (3) weeks.

Decision Sought

43. Cabinet:

- a. reviewed and approved the grant of Certificates of Residence and Belonger Status to the following ninety-nine (99) applicants, who, have met the legal requirements of Section 2 (4) and Section 3 of the Immigration and Passport Amendment Act, 2019:





[REDACTED]

44.b. deferred making a decision on applicant [REDACTED] for three (3) weeks;

45.c. decided that a Ceremony be held to confer Belonger Status on the approved applicants; and

46.d. decided that an expedited extract to allow the decision of the Cabinet to be acted upon before the confirmation of the Minutes.

[REDACTED]

›

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2

[REDACTED]

[REDACTED]

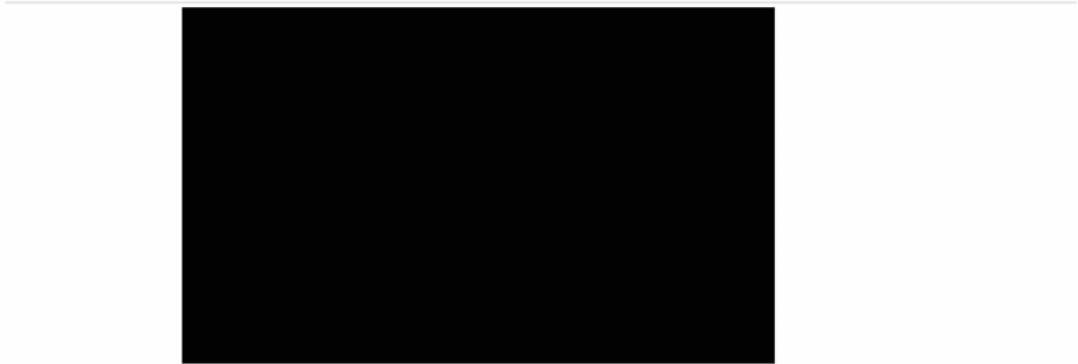
[REDACTED]

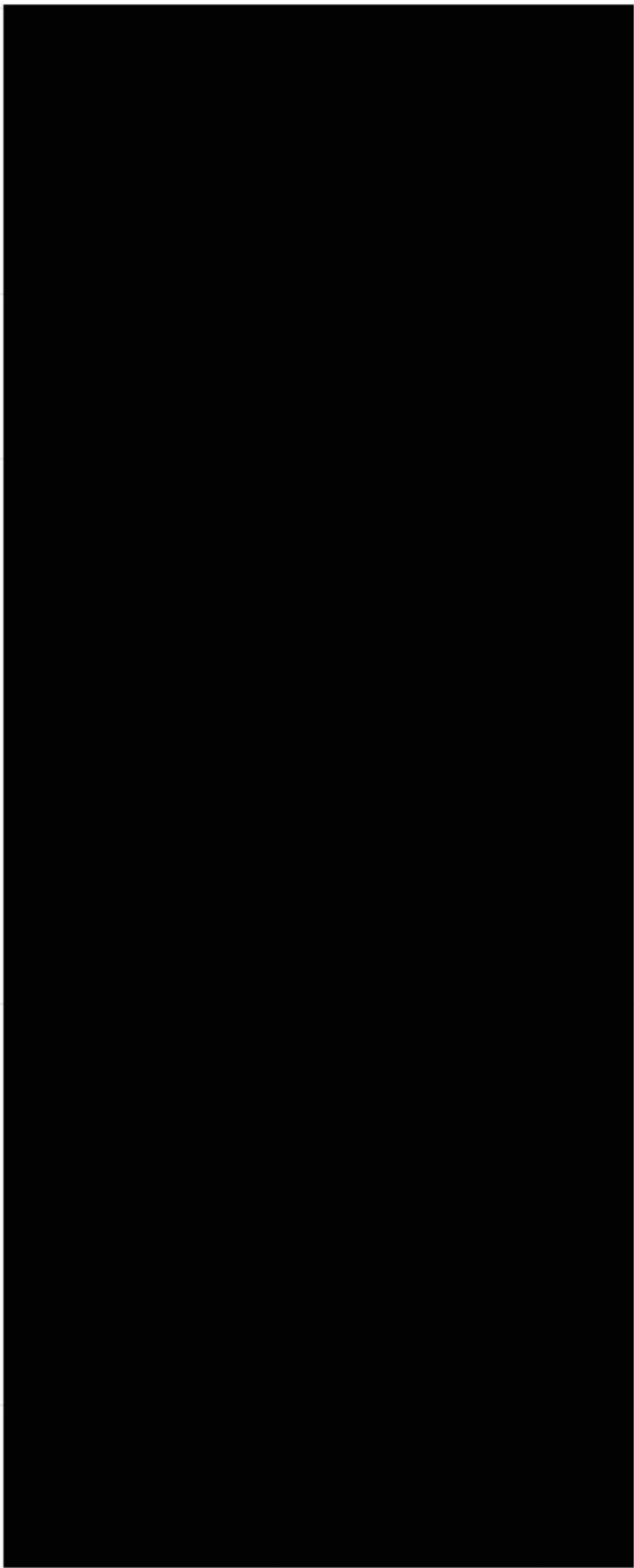
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]







Adjournment

The Chairman adjourned the meeting at 10:55am.

Mrs. Vicki Samuel-Lettsome
Deputy Cabinet Secretary
for Ms. Sandra Ward
Cabinet Secretary
04 December 2019

From: Inquiry Response Unit <[REDACTED]>
Sent: 13 October 2021 18:43
To: Andrew King (Sensitive)
Cc: Juienna Tasaddiq (Sensitive); Rhea Harrikissoon (Sensitive); Steven Chandler (Sensitive); Eker-Male, Martha; Peaty, Lauren; [REDACTED]; Hon. Dawn J. Smith; Fiona Forbes-Vanterpool; Jo-ann Roberts; Olympitis, Niki; Haeri, Hussein; Knock, Sara-Jane; Inquiry Response Unit
Subject: RE: 211007 Email to Hon Vincent Wheatley re Belongership [W-EU.FID1849191]

Dear Andrew

Please see below responses (in red) to your e-mail of 7 October.

1. An explanation (along with disclosure of any relevant documentation such as emails and letters) be provided as to how the letter dated 17 December 2020 (which conveyed to [REDACTED] that his application had been unsuccessful) was issued and the decision therein reached given that it was confirmed on your behalf by the IRU in the attached email dated 30 September 2021 that: [REDACTED] Application was not granted at the Cabinet meeting on 22 November 2019. It has not returned to Cabinet for consideration since". In particular, please provide an explanation as to how the application was refused given that the application did not return to Cabinet for consideration. On the evidence available, only Cabinet has decision making powers in respect of belongership applications; and therefore the Commissioner directs you to confirm who instructed/authorised the Immigration Department to send the letter.

Due to the length of time since the end of the Fasttrack scheme in relation to Belongership, the Department of Immigration determined that the letter should be issued and the application fee returned. This procedure was followed with other unsuccessful applicants.

2. A copy of all documents submitted by or on behalf of [REDACTED] (including any completed by others on his behalf) in support of his application under the fast track.

[REDACTED] Application contains information of a personal and sensitive nature concerning both him and his parents. This includes, for example, details of the balance of his father's bank account. In providing the information to the Government at the time of making the Application, [REDACTED] had a reasonable expectation that such information would be treated as private and confidential, and used only for the purpose of processing the Application. [REDACTED] would not have expected the information to be disclosed to the Commission of Inquiry without prior reference to him. Furthermore, [REDACTED] and/or his parents have a right to respect for private and family life under the Constitution. The Application also includes information about religion and race designated as sensitive under the Data Protection Act.

In these circumstances, the Attorney General considers that it is appropriate to seek [REDACTED] consent before providing the Application to the COI. In order to obtain his consent we, on the Attorney General's behalf, would need to channel any request through his father, [REDACTED]. Please confirm as soon as possible that you wish us to do so.

3. Confirmation as to whether [REDACTED] had submitted an application for Belongership status before the Cabinet meeting at which he was discussed and whether he has made any application for Belongership subsequent to that meeting.

[REDACTED] had been granted Belongership some years prior to the Cabinet meeting in question.

4. Clarification of the basis on which you seek the redaction of the names of successful candidates for Belongership given that the fact that these individuals were granted that status would be in the public domain. Further, clarification of the basis on which you and/or the Attorney General seek to limit references to [REDACTED] given that his conviction and sentence are a matter of public record.

The redaction of names helps prevent Applicants' identities being matched up with other potentially private information. Similarly [REDACTED] conviction may be a matter of public record but other personal or private data about him will not be. As above, please confirm if you wish us to seek [REDACTED] consent to be identified and/or for his personal information to be disclosed at public hearings.

Best regards

Sara-Jane
On behalf of the Inquiry Response Unit

Sara-Jane Knock
Senior Associate | Legal Practitioner
Litigation
t +1 284 494 4949, + [REDACTED]
[withersworldwide.com](https://www.withersworldwide.com) | [my profile](#)

Withers BVI
Little Denmark, PO Box 145, Road Town, Tortola VG1110, British Virgin Islands

From: Andrew King (Sensitive) <andrew.king@bvi.public-inquiry.uk>

Sent: 07 October 2021 12:52

To: Peaty, Lauren <[REDACTED]>; Dawn J. Smith <[REDACTED]>; Fiona Forbes-Vanterpool <[REDACTED]>; Jo-ann Roberts <[REDACTED]>;
Olympitis, Niki <[REDACTED]>; Haeri, Hussein <[REDACTED]>; Knock, Sara-Jane <[REDACTED]>

Cc: juienna.tasaddiq@bvi.public-inquiry.uk; rhea.harrikissoon@bvi.public-inquiry.uk; Steven Chandler (Sensitive) <steven.chandler@bvi.public-inquiry.uk>

Subject: 211007 Email to Hon Vincent Wheatley re Belongership

Dear Hon Vincent Wheatley

The Commissioner thanks you for providing the further information/documents he requested via the IRU's email below.

In light of that disclosure, the Commissioner has directed that you please provide me with the following ("the Disclosure") by no later than **4pm tomorrow (Friday 8 October 2021)**:

1. An explanation (along with disclosure of any relevant documentation such as emails and letters) be provided as to how the letter dated 17 December 2020 (which conveyed to [REDACTED] that his application had been unsuccessful) was issued and the decision therein reached given that it was confirmed on your behalf by the IRU in the attached email dated 30 September 2021 that: "[REDACTED] Application was not granted at the Cabinet meeting on 22 November 2019. It has not returned to Cabinet for consideration since". In particular, please provide an explanation as to how the application was refused given that the application did not return to Cabinet for consideration. On the evidence available, only Cabinet has decision making powers in respect of belongership applications; and therefore the Commissioner directs you to confirm who instructed/authorised the Immigration Department to send the letter.
2. A copy of all documents submitted by or on behalf of [REDACTED] (including any completed by others on his behalf) in support of his application under the fast track.
3. Confirmation as to whether [REDACTED] had submitted an application for Belongership status before the Cabinet meeting at which he was discussed and whether he has made any application for Belongership subsequent to that meeting.
4. Clarification of the basis on which you seek the redaction of the names of successful candidates for Belongership given that the fact that these individuals were granted that status would be in the public domain. Further, clarification of the basis on which you and/or the Attorney General seek to limit references to [REDACTED] given that his conviction and sentence are a matter of public record.

The Commissioner considers that the Disclosure provided to the COI will be used at a public hearing and further. Accordingly, at the same time as providing the Disclosure you must indicate which part or parts of any documents, you consider should be redacted (including of any personal data). You should do this by providing two copies of the Disclosure. One copy should show the redactions you seek marked but still visible; the other should show the same redactions marked out so that they are no longer visible. Detailed reasons must be given for any proposed redactions.

This email has been copied to the Attorney General and IRU.

Best wishes

Andrew King | Senior Solicitor to the British Virgin Islands Commission of Inquiry

Email: andrew.king@bvi.public-inquiry.uk

Address: Room RB 1.11, 22 Whitehall, London SW1A 2EG and BVI International Arbitration Centre 3rd Floor, Ritter House, Wickham's Cay II Road Town, Tortola

You can contact and submit information to the Commission of Inquiry team through the Commission's website at www.bvi.public-inquiry.uk

From: Peaty, Lauren <[REDACTED]>

Sent: 06 October 2021 19:06

To: Andrew King (Sensitive) <andrew.king@>; [REDACTED]; Hon. Dawn J. Smith <[REDACTED]>; Fiona Forbes-Vanterpool <[REDACTED]>; Jo-ann Roberts <[REDACTED]>; Olympitis, Niki <[REDACTED]>; Haeri, Hussein <[REDACTED]>; Knock, Sara-Jane <[REDACTED]>

Cc: Juienna Tasaddiq (Sensitive) <juienna.tasaddiq@>; Steven Chandler (Sensitive) <steven.chandler@>; Rhea Harrikissoon (Sensitive) <rhea.harrikissoon@>

Subject: RE: 210928 Email to Hon Vincent Wheatley [W-EU.FID1853837]

Dear Andrew

Please see below update in relation to your e-mail of 29 September 2021. We are uploading the accompanying bundles of disclosure to Relativity and you should have them shortly.

1. **An update on the current status of the belongingship applications of [REDACTED] and [REDACTED] by no later than 12 noon on Thursday 30 September 2021;**

The Immigration Department has now also located the letter at page [55], in which the Immigration Department conveyed to [REDACTED] that his application had been unsuccessful.

2. **Copies of all the papers concerning the application of [REDACTED] which were provided to Cabinet in order to determine the former's application for Belongership on 22 November 2019;**

The relevant Cabinet Paper and Appendices are at [1-54]. We have not provided you with the personal information in respect of other applicants, which appears as redacted. This is because the information is of a particularly personal nature. If the Commissioner considers that the redacted information is relevant, please let us know so that the Attorney General can consider 'lifting' the redactions.

We have proposed further redactions in translucent and opaque form for use in any further hearing bundle on this subject. However we consider that prior to any further hearing on this matter, the COI should discuss with the IRU what arrangements should be made to prevent further identification of [REDACTED] by the media and the public.

3. **Copies of any Cabinet Papers (Minutes, Memorandums and Expedited Extracts etc) in which those belongingship applications were considered by Cabinet after the Cabinet meeting on 22 November 2019; and**

N/a

4. **Confirmation as to whether from 2015 to date, the Cabinet has granted Belongership status to applicants who had served or were serving sentences of imprisonment (whether in the BVI or in other jurisdictions) and/or whose convictions would not fall to be described as "spent" under BVI law and, if so:**

- a. **The names of the individuals granted Belongership;**

N/a

- b. **The dates on which they were granted Belongership**

N/a

- c. **The nature of the criminal offences committed by the applicant.**

N/a

The Department of Immigration has checked the files during this period, and has not found any instance in which an individual known to have such a conviction has been granted Belongership.

Kind regards

Lauren

Lauren Peaty
Senior Associate
Dispute Resolution
+1 284 494 4949 [REDACTED]
withersworldwide.com | [my profile](#)

Withers BVI
Little Denmark, PO Box 145, Road Town, Tortola VG1110, British Virgin Islands



From: Andrew King (Sensitive) [<mailto:andrew.king@bvi.public-inquiry.uk>]

Sent: 29 September 2021 08:33

To: [REDACTED] Hon. Dawn J. Smith <[REDACTED]>; Fiona Forbes-Vanterpool <[REDACTED]>; Jo-ann Roberts <[REDACTED]>; Olympitis, Niki <[REDACTED]>; Haeri, Hussein <[REDACTED]>; Peaty, Lauren <[REDACTED]>; Knock, Sara-Jane <[REDACTED]>

Cc: [juenna.tasaddiq@bvi.public-inquiry.uk](mailto:juienna.tasaddiq@bvi.public-inquiry.uk); Steven Chandler (Sensitive) <steven.chandler@bvi.public-inquiry.uk>; Rhea Harrikissoon (Sensitive) <rhea.harrikissoon@bvi.public-inquiry.uk>

Subject: RE: 210928 Email to Hon Vincent Wheatley

Dear Hon Vincent Wheatley

The Commissioner has amended the directions contained in my email to you below. The changes to the directions are identified in blue text.

Best wishes

Andrew King | Senior Solicitor to the British Virgin Islands Commission of Inquiry

Email: andrew.king@bvi.public-inquiry.uk

Address: Room RB 1.11, 22 Whitehall, London SW1A 2EG and BVI International Arbitration Centre 3rd Floor, Ritter House, Wickham's Cay II Road Town, Tortola

You can contact and submit information to the Commission of Inquiry team through the Commission's website at www.bvi.public-inquiry.uk

From: Andrew King (Sensitive)

Sent: 28 September 2021 21:23

To: [REDACTED]; Hon. Dawn J. Smith <[REDACTED]>; Fiona Forbes-Vanterpool <[REDACTED]>; Jo-ann Roberts <[REDACTED]>; Olympitis, Niki <[REDACTED]>; Haeri, Hussein <[REDACTED]>; Peaty, Lauren <[REDACTED]>; Knock, Sara-Jane <[REDACTED]>

Cc: juienna.tasaddiq@bvi.public-inquiry.uk; Steven Chandler (Sensitive) <steven.chandler@bvi.public-inquiry.uk>; Rhea Harrikissoon (Sensitive) <rhea.harrikissoon@bvi.public-inquiry.uk>

Subject: 210928 Email to Hon Vincent Wheatley

Dear Hon Vincent Wheatley

The Commissioner thanks you for giving evidence to the COI today.

The Commissioner has directed that you please provide me with the following ("the Disclosure"):

1. An update on the current status of the belongingship applications of [REDACTED] and [REDACTED] by no later than 12 noon on Thursday 30 September 2021;
2. By no later than 4pm on Friday 1 October 2021, copies of all the papers concerning the application of [REDACTED] which were provided to Cabinet in order to determine the former's application for Belongership on 22 November 2019;
3. By no later than 4pm on Friday 1 October 2021, copies of any Cabinet Papers (Minutes, Memorandums and Expedited Extracts etc) in which those belongingship applications were considered by Cabinet after the Cabinet meeting on 22 November 2019; and
4. By no later than 4pm on Friday 1 October 2021, confirmation as to whether from 2015 to date, the Cabinet has granted Belongership status to applicants who had served or were serving sentences of imprisonment (whether in the BVI or in other jurisdictions) and/or whose convictions would not fall to be described as "spent" under BVI law and, if so:
 - (a) The names of the individuals granted Belongership;
 - (b) The dates on which they were granted Belongership
 - (c) The nature of the criminal offences committed by the applicant.

Exercising his powers under section 9 of the Commissions of Inquiry Act, the Commissioner has published two Protocols, one concerning the 'Provision of Documents' to the COI, and the other concerning the 'Redaction of Documents'. They can be found on the COI's website. The Protocols are designed to facilitate the prompt delivery of documents to the COI and help you understand the COI's procedures for the provision of documents, and the redaction of any documents it intends to disclose further.

The Commissioner considers that the Disclosure provided to the COI will be used at a public hearing and further. Accordingly, at the same time as providing the Disclosure you must indicate which part or parts of any documents, you consider should be redacted (including of any personal data). You should do this by providing two copies of the Disclosure. One copy should show the redactions you seek marked but still visible; the other should show the same redactions marked out so that they are no longer visible. Detailed reasons must be given for any proposed redactions.

This email has been copied to the Attorney General and IRU.

Best wishes

Andrew King | Senior Solicitor to the British Virgin Islands Commission of Inquiry

Email: andrew.king@bvi.public-inquiry.uk

Address: Room RB 1.11, 22 Whitehall, London SW1A 2EG and BVI International Arbitration Centre 3rd Floor, Ritter House, Wickham's Cay II Road Town, Tortola

You can contact and submit information to the Commission of Inquiry team through the Commission's website at www.bvi.public-inquiry.uk

From: Inquiry Response Unit <[REDACTED]>
Sent: 09 October 2021 00:02
To: Andrew King (Sensitive); Peaty, Lauren; Hon. Dawn J. Smith; [REDACTED]
Cc: Haeri, Hussein; Olympitis, Niki; Jo-ann Roberts; Fiona Forbes-Vanterpool; Rhea Harrikissoon (Sensitive); Juienna Tasaddiq (Sensitive); Steven Chandler (Sensitive)
Subject: RE: 211007 Email to the Hon Premier and Minister of Finance - Belongership [W-EU.FID1849191]

Dear Andrew

The Honourable Premier has asked us to convey the following to you in relation to your email below (using your numbering for ease):

1. The Honourable Premier recalls a chance encounter with [REDACTED] father. He cannot recall the time or place, only that it was not a formal meeting. During that encounter [REDACTED] informed the Premier that his son's application for Belonger Status had been submitted and that he was informing the Honourable Premier so that it would not come as a surprise. The reason provided to the Honourable Premier for the application was that the US Court had indicated that [REDACTED] could serve half his sentence in the US and half in their country of status and that his family would wish for him to serve half his sentence in the BVI.
2. The Honourable Premier vaguely recalls a second encounter with [REDACTED] a few months after the Cabinet meeting in question. Again, he cannot recall the time or place of that encounter, which was not a formal meeting. During the course of the encounter, [REDACTED] brought up his son's application once again and the Honourable Premier recalls saying to [REDACTED] that he '...wouldn't put any hope on it.'
3. For the avoidance of doubt, [REDACTED] was granted Belonger Status in 2012. The 'special consideration' mentioned was potentially serving part of his US prison sentence in the BVI. The Honourable Premier had heard in passing that [REDACTED] and his family wished him to serve the latter part of his sentence in the BVI. He cannot specifically recall the date, time or source of that information but recalls asking the Governor about it.

Best regards

Sara-Jane
On behalf of the Inquiry response Unit

From: Andrew King (Sensitive) <andrew.king@bvi.public-inquiry.uk>
Sent: 07 October 2021 12:45
To: Peaty, Lauren <[REDACTED]>; Hon. Dawn J. Smith <[REDACTED]>; [REDACTED]
Cc: Haeri, Hussein <[REDACTED]>; Olympitis, Niki <[REDACTED]>; Knock, Sara-Jane <[REDACTED]>; Jo-ann Roberts <[REDACTED]>; Fiona Forbes-Vanterpool <[REDACTED]>; rhea.harrikissoon@bvi.public-inquiry.uk; juienna.tasaddiq@bvi.public-inquiry.uk; Steven Chandler (Sensitive) <steven.chandler@bvi.public-inquiry.uk>
Subject: 211007 Email to the Hon Premier and Minister of Finance - Belongership

Dear Hon Premier

As you may be aware, the Commissioner recently heard evidence from the Hon Vincent Wheatley and Mr Joseph Smith-Abbott on the topic of Belongership. A copy of that hearing transcript can be found on the COI's website.

In light of that evidence and subsequent disclosure provided by the Hon Wheatley to the COI at 20.21pm yesterday evening, the Commissioner wishes to draw your attention to the attached Cabinet Minutes No. 32 of 2019 (re Memo No. 405/2019) in which it is stated: "37. The Premier responded that the applicant's parents had made representation and informed him that the U.S. Court had indicated that they would allow the applicant to serve out his sentence in the Territory. The Premier made it clear that he was not condoning the crime but that the BVI was the only place that the applicant knew.". You are also recorded as saying "40. The Premier mentioned that there was another case involving [REDACTED] who would be applying for a similar consideration. [REDACTED] was not born in the Territory but had lived here for over 30 years."

You are due to give evidence to the Commissioner in respect of the topic of Belongership on Monday 11 October 2021. In advance of you giving that evidence the Commissioner has directed that you please provide me with the following information / disclosure ("the Disclosure") via email by no later than **4pm tomorrow (Friday 8 October 2021)**:

1. An explanation (along with disclosure of any relevant documentation such as emails and letters) as to the nature, date(s) and manner (e.g. oral and/or in writing) of the representations made to you by [REDACTED] parents.
2. Confirmation as to whether you had any discussion with [REDACTED] parents at any time after the Cabinet meeting at which their son's application was discussed together with an explanation as to the nature, date(s) and manner (e.g. oral and/or in writing) of any such discussion.
3. An explanation as to how you came to be aware that [REDACTED] would be "applying for a similar consideration" including details as to the source from which you received this information, the date or dates on which it was provided and the manner in which (e.g. oral and/or in writing) it was provided.

The Commissioner appreciates that the timing of the disclosure from Hon Wheatley may be said to restrict the time you have to collate relevant documents. The Commissioner does not consider, however, that any delays in obtaining documentary material should prevent you from providing the explanations and confirmation sought by the time it is requested.

The Commissioner considers that the Disclosure provided to the COI will be used at a public hearing and further. Accordingly, at the same time as providing the Disclosure you must indicate which part or parts of any documents, you consider should be redacted (including of any personal data). You should do this by providing two copies of the Disclosure. One copy should show the redactions you seek marked but still visible; the other should show the same redactions marked out so that they are no longer visible. Detailed reasons must be given for any proposed redactions.

This email has been copied to the Attorney General and IRU.

Best wishes

Andrew King | Senior Solicitor to the British Virgin Islands Commission of Inquiry

Email: andrew.king@bvi.public-inquiry.uk

Address: Room RB 1.11, 22 Whitehall, London SW1A 2EG and BVI International Arbitration Centre 3rd Floor, Ritter House, Wickham's Cay II Road Town, Tortola

You can contact and submit information to the Commission of Inquiry team through the Commission's website at www.bvi.public-inquiry.uk

Applications for Certificates of Residence and Belonger Status - (Immigration Regularization – Batch No. 06)

Signed

· 05 December 2019 · MNRLI · File: ADM 1/112 · Ms. Nadia Demming-Hodge
· Memo No. 443/2019 · Extract No. REx/443/2019 (/decisions/179)

Background Information

1) On 3rd June, 2019, the House of Assembly passed a Bill entitled Immigration and Passport (Amendment) Act, 2019 (**see Appendix A**), which was assented to by the Ag. Governor on 12th June, 2019. Also attached at **Appendix A(i)** is the Immigration and Passport (Amendment) (No.2) Act, 2019 gazetted on 12th September, 2019 extending the sunset of these legislations to 1st February, 2020. These amendments allowed for a special fast track process to be developed for those residing in the Territory for a period of twenty (20) years or more, without gaining status, to be able to do so. These persons had the opportunity to apply for Residence and Belonger Status, or Belonger Status only depending on their preexisting qualifiers.

2) Under this expedited process a timeline of three (3) weeks was allotted to allow persons to submit the required forms and documents. The time within which persons were eligible to apply ended on 16th August, 2019. Applicants were required to pay upon submission of all applications a fee of One Thousand Five Hundred and Ten Dollars (\$1,510.00) for Residence & Belonger Status'.

3) The Clear Path to Regularisation: Residency and Belonger Status Programme, is a special project initiated and driven by the Honorable Premier, and does not require a deliberation of the Board of Immigration for applications received, but is approved by Cabinet pursuant to the Act. The process specifically required applicants to submit their application and make payment upfront, complete a

written exam, and submit all of the same documentation that persons would have originally submitted through the normal process at the Immigration Department. Following the receipt of completed forms, documents and payments, persons were profiled for submission to Cabinet. A profile of each applicant which summarizes the application of each applicant is attached as **Appendix B** for Cabinet's deliberation. It should be noted that full applications are available at the Department of Immigration if Cabinet wishes to gather further information on each applicant.

4) Cabinet should further note that though the BVI Government will see some loss as it relates to revenue generated through work permits from the persons listed within the Decision Sought, while being mindful that significant revenue has been generated through the fees, that each person has paid to be awarded these statuses. Furthermore, contribution will be derived through differing forms, such as investments in local property and homes, contributions to society and communities, and business ventures just to name a few will far surpass the loss of revenue from work permits and related fees.

Purpose

5) To allow for persons who have resided within the Territory for a period exceeding twenty (20) years to be granted Residence and Belonger Status.

Cross-Ministry Consultation

6) The nature of this paper does not require cross-ministry consultation.

Financial Implications

7) An aggregate of \$101,170 was paid into the coffers of the Government of the Virgin Islands by these applicants.

8) Based on the decision sought there will be a decrease of revenues in the areas of work permit and immigration fees going forward. However, the assumption is that these applicants will make positive contributions in other areas that will impact the economic growth of this Territory.

Legal Implications

9) The size of the number of applicants (**in this case 67**) and the short notice for comments on the Cabinet Paper does not provide me with the requisite opportunity to determine whether or not the applicants have qualified for the grant of resident or believer status and that there are no disqualifying factors such as criminal convictions, frauds etc. whether in or outside the Virgin Islands, which is a relevant consideration in these matters.

10) I proceed on the assumption that the Ministry has conducted the application and that they do in fact qualify under the Immigration and Passport Act for the status that they have applied for. In any event, a certificate granted is subject to revocation for fraud, false representation or concealment of material fact and imprisonment among other considerations.

Communication Strategy

11) All persons applying for Residence and Belonger Status will be notified of a ceremony to collect all certificates and cards following Cabinet's approval.

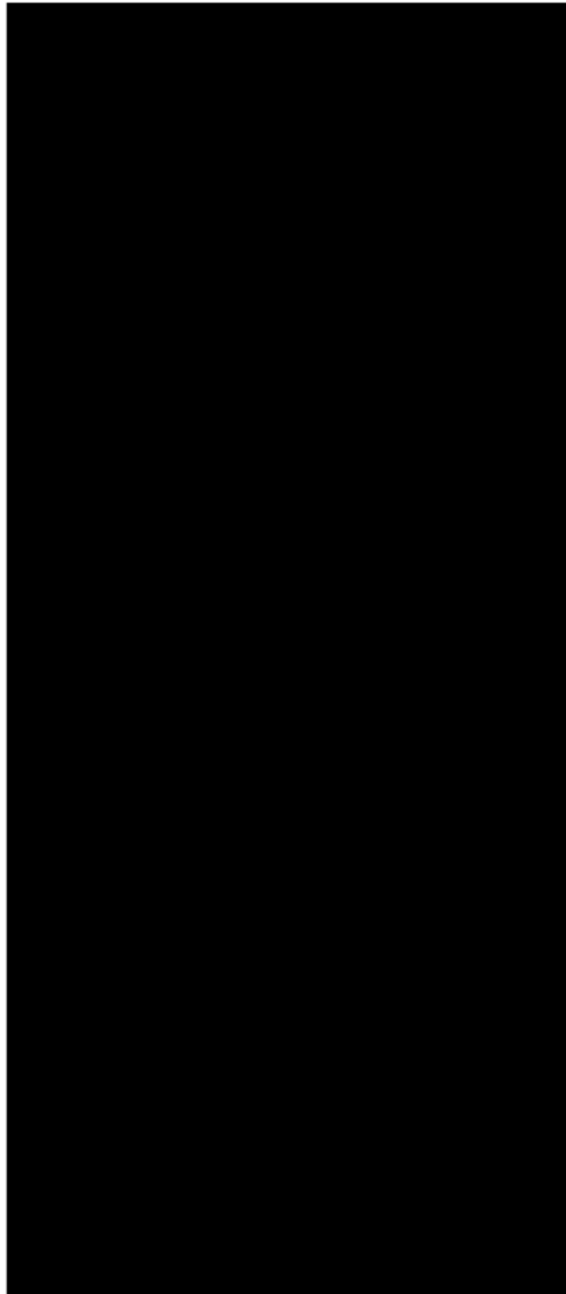
Conclusion

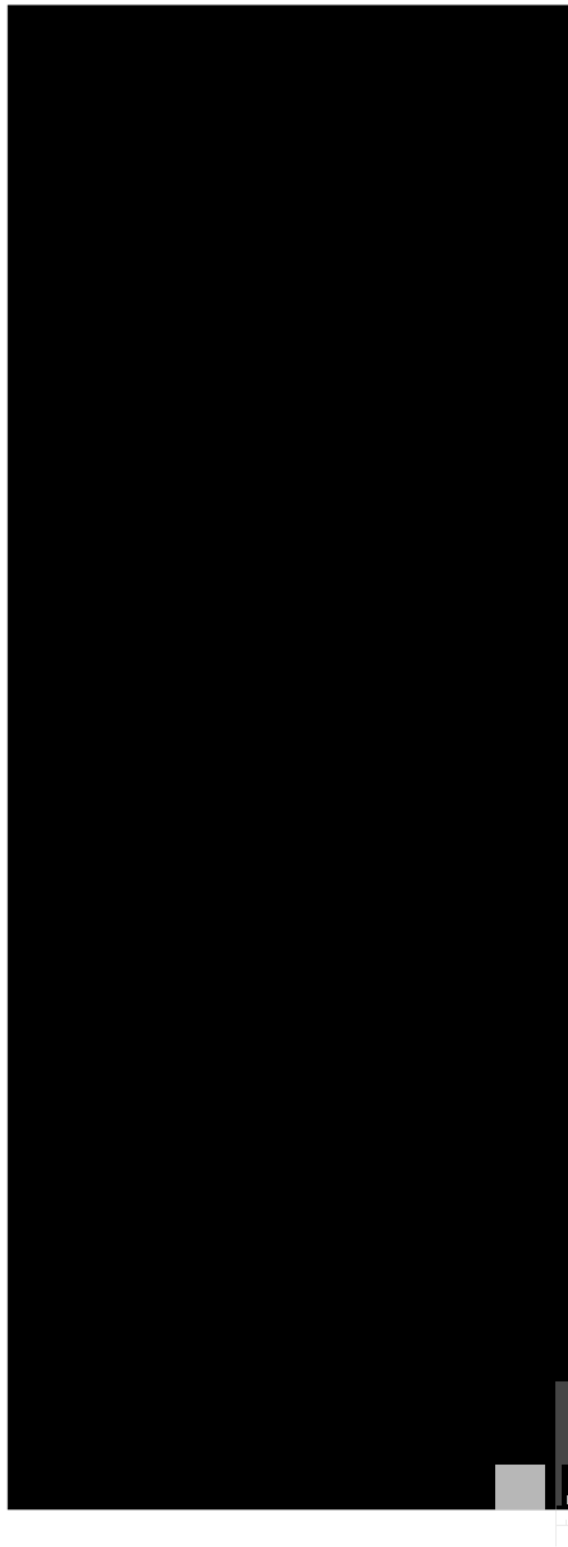
12) Members are asked to concur with the decision sought.

Decision Sought

Cabinet is invited to:

- a. review and approve the grant of Certificates of Residence and Belonger Status to the following Forty Six (46) applicants, who, have met the legal requirements of Section 2 (4) and Section 3 of the Immigration and Passport Amendment Act, 2019:







- b. decide not to approve the following four (4) applicants for Certificates of Residence and Belonger Status under the fast track process and that the Ministry of Natural Resources, Labour and Immigration refers the applicants to the normal process;



- c. decide that a Ceremony be held to confer Residence & Belonger Status on the approved applicants; and
- d. decide that an expedited extract be issued to allow the decision of Cabinet to be acted upon immediately and before the confirmation of the Minutes.

Recipients: Financial Secretary, MOF; Attorney General, AGC;

Hon. Vincent Wheatley
Minister for Natural
Resources, Labour and
Immigration
13 December 2019

Applications for Belonger Status - (Immigration Regularization – Batch No. 07)

Signed

· 05 December 2019 · MNRLI · File: ADM 1/112 · Ms. Nadia Demming-Hodge
· Memo No. 444/2019 · Extract No. REx/444/2019 (/decisions/178)

Background Information

1) On 3rd June, 2019, the House of Assembly passed a Bill entitled Immigration and Passport (Amendment) Act, 2019 (**see Appendix A**), which was assented to by the Ag. Governor on 12th June, 2019. Also attached at **Appendix A(i)** is the Immigration and Passport (Amendment) (No.2) Act, 2019 gazetted on 12th September, 2019 extending the sunset of these legislations to 1st February, 2020. These amendments allowed for a special fast track process to be developed for those residing in the Territory for a period of twenty (20) years or more, without gaining status, to be able to do so. These persons had the opportunity to apply for Residence and Belonger Status, or Belonger Status only depending on their preexisting qualifiers.

2) Under this expedited process a timeline of three (3) weeks was allotted to allow persons to submit the required forms and documents. The time within which persons were eligible to apply ended on 16th August, 2019. Applicants were required to pay upon submission of all applications a fee of Eight Hundred and Ten Dollars (\$810.00) for Belonger Status.

3) The Clear Path to Regularisation: Residency and Belonger Status Programme, is a special project initiated and driven by the Honorable Premier, and does not require a deliberation of the Board of Immigration for applications received, but is approved by Cabinet pursuant to the Act. The process specifically required applicants to submit their application and make payment upfront, complete a written exam, and submit all of the same documentation that persons would

have originally submitted through the normal process at the Immigration Department. Following the receipt of completed forms, documents and payments, persons were profiled for submission to Cabinet. A profile of each applicant which summarizes the application of each applicant is attached as **Appendix B** for Cabinet's deliberation. It should be noted that full applications are available at the Department of Immigration if Cabinet wishes to gather further information on each applicant.

4) Cabinet should further note that though the BVI Government will see some loss as it relates to revenue generated through work permits from the persons listed within the Decision Sought, while being mindful that significant revenue has been generated through the fees, that each person has paid to be awarded these statuses. Furthermore, contribution will be derived through differing forms, such as investments in local property and homes, contributions to society and communities, and business ventures just to name a few will far surpass the loss of revenue from work permits and related fees.

Purpose

5) To allow for persons who have resided within the Territory for a period exceeding twenty (20) years to be granted Belonger Status.

Cross-Ministry Consultation

6) The nature of this paper does not require cross-ministry consultation.

Financial Implications

7) An aggregate of \$38,800 was paid into the coffers of the Government of the Virgin Islands by these applicants.

8) Based on the decision sought there will be a decrease of revenues in the areas of work permit and immigration fees going forward. However, the assumption is that these applicants will make positive contributions in other areas that will impact the economic growth of this Territory.

Legal Implications

9) The size of the number of applicants (**in this case 48**) and the short notice for comments on the Cabinet Paper does not provide me with the requisite opportunity to determine whether or not the applicants have qualified for the grant of resident or believer status and that there are no disqualifying factors such as criminal convictions, frauds etc. whether in or outside the Virgin Islands, which is a relevant consideration in these matters.

10) I proceed on the assumption that the Ministry has conducted the application and that they do in fact qualify under the Immigration and Passport Act for the status that they have applied for. In any event, a certificate granted is subject to revocation for fraud, false representation or concealment of material fact and imprisonment among other considerations.

Communication Strategy

11) All persons applying for Residence and Belonger Status will be notified of a ceremony to collect all certificates and cards following Cabinet's approval.

Conclusion

12) Members are asked to concur with the decision sought.

Decision Sought

Cabinet is invited to:

- a. review and approve the grant of Certificates of Belonger Status to the following Forty Eight (48) applicants, who, have met the legal requirements of Section 2 (4) and Section 3 of the Immigration and Passport Amendment Act, 2019:







- b. decide that a Ceremony be held to confer Belonger Status on the approved applicants; and
- c. decide that an expedited extract be issued to allow the decision of Cabinet to be acted upon immediately and before the confirmation of the Minutes.

Recipients: Financial Secretary, MOF; Attorney General, AGC;

Hon. Vincent Wheatley
Minister for Natural
Resources, Labour and
Immigration
09 December 2019

From: Andrew King (Sensitive) [REDACTED]
Sent: 29 September 2021 13:33
To: [REDACTED]; Hon. Dawn J. Smith; Fiona Forbes-Vanterpool; Jo-ann Roberts; Olympitis, Niki; Haeri, Hussein; Peaty, Lauren; Knock, Sara-Jane
Cc: juienna.tasaddiq@bvi.public-inquiry.uk; Steven Chandler (Sensitive); Rhea Harrikissoon (Sensitive)
Subject: RE: 210928 Email to Hon Vincent Wheatley

Dear Hon Vincent Wheatley

The Commissioner has amended the directions contained in my email to you below. The changes to the directions are identified in blue text.

Best wishes

Andrew King | Senior Solicitor to the British Virgin Islands Commission of Inquiry

Email: andrew.king@bvi.public-inquiry.uk

Address: Room RB 1.11, 22 Whitehall, London SW1A 2EG and BVI International Arbitration Centre 3rd Floor, Ritter House, Wickham's Cay II Road Town, Tortola

You can contact and submit information to the Commission of Inquiry team through the Commission's website at www.bvi.public-inquiry.uk

From: Andrew King (Sensitive)
Sent: 28 September 2021 21:23
To: [REDACTED]; Hon. Dawn J. Smith <[REDACTED]>; Fiona Forbes-Vanterpool <[REDACTED]>; Jo-ann Roberts <[REDACTED]>; Olympitis, Niki <[REDACTED]>; Haeri, Hussein <[REDACTED]>; Peaty, Lauren <[REDACTED]>; Knock, Sara-Jane <[REDACTED]>
Cc: juienna.tasaddiq@bvi.public-inquiry.uk; Steven Chandler (Sensitive) <steven.chandler@bvi.public-inquiry.uk>; Rhea Harrikissoon (Sensitive) <rhea.harrikissoon@bvi.public-inquiry.uk>
Subject: 210928 Email to Hon Vincent Wheatley

Dear Hon Vincent Wheatley

The Commissioner thanks you for giving evidence to the COI today.

The Commissioner has directed that you please provide me with the following ("the Disclosure"):

1. An update on the current status of the belongingship applications of [REDACTED] and [REDACTED] by no later than 12 noon on Thursday 30 September 2021;
2. **By no later than 4pm on Friday 1 October 2021, copies of all the papers concerning the application of [REDACTED] which were provided to Cabinet in order to determine the former's application for Belongership on 22 November 2019;**
3. By no later than 4pm on Friday 1 October 2021, copies of any Cabinet Papers (Minutes, Memorandums and Expedited Extracts etc) in which those belongingship applications were considered by Cabinet after the Cabinet meeting on 22 November 2019; and

4. By no later than 4pm on Friday 1 October 2021, confirmation as to whether from 2015 to date, the Cabinet has granted Belongership status to applicants who had served or were serving sentences of imprisonment (whether in the BVI or in other jurisdictions) and/or whose convictions would not fall to be described as “spent” under BVI law and, if so:

- (a) The names of the individuals granted Belongership;
- (b) The dates on which they were granted Belongership
- (c) The nature of the criminal offences committed by the applicant.

Exercising his powers under section 9 of the Commissions of Inquiry Act, the Commissioner has published two Protocols, one concerning the ‘Provision of Documents’ to the COI, and the other concerning the ‘Redaction of Documents’. They can be found on the COI’s website. The Protocols are designed to facilitate the prompt delivery of documents to the COI and help you understand the COI’s procedures for the provision of documents, and the redaction of any documents it intends to disclose further.

The Commissioner considers that the Disclosure provided to the COI will be used at a public hearing and further. Accordingly, at the same time as providing the Disclosure you must indicate which part or parts of any documents, you consider should be redacted (including of any personal data). You should do this by providing two copies of the Disclosure. One copy should show the redactions you seek marked but still visible; the other should show the same redactions marked out so that they are no longer visible. Detailed reasons must be given for any proposed redactions.

This email has been copied to the Attorney General and IRU.

Best wishes

Andrew King | Senior Solicitor to the British Virgin Islands Commission of Inquiry

Email: andrew.king@bvi.public-inquiry.uk

Address: Room RB 1.11, 22 Whitehall, London SW1A 2EG and BVI International Arbitration Centre 3rd Floor, Ritter House, Wickham’s Cay II Road Town, Tortola

You can contact and submit information to the Commission of Inquiry team through the Commission’s website at www.bvi.public-inquiry.uk

From: Peaty, Lauren <[REDACTED]>
Sent: 01 October 2021 00:51
To: Andrew King (Sensitive); [REDACTED]; Hon. Dawn J. Smith; Fiona Forbes-Vanterpool; Jo-ann Roberts; Olympitis, Niki; Haeri, Hussein; Knock, Sara-Jane
Cc: Juienna Tasaddiq (Sensitive); Steven Chandler (Sensitive); Rhea Harrikissoon (Sensitive)
Subject: RE: 210928 Email to Hon Vincent Wheatley [W-EU.FID1849186]

Dear Andrew

[REDACTED] Application was not granted at the Cabinet meeting on 22 November 2019. It has not returned to Cabinet for consideration since.

There was no Application for Belonger Status in respect of [REDACTED] under consideration at the Cabinet meeting, and therefore there is no update to provide.

In relation to the other points in the direction, we request an extension until close of business on Wednesday. On discussion with Mr Penn it has become clear that the information will take some time to compile and that although a member of the Department of Immigration has been assigned to undertake the work it will not be possible to do so in the time presently allowed. Furthermore the Permanent Secretary is preparing to give evidence in the COI tomorrow and so is not able to focus on the disclosure request.

Kind regards

Lauren

Lauren Peaty
Senior Associate
Dispute Resolution
t +1 284 494 4949 [REDACTED]
withersworldwide.com | [my profile](#)

Withers BVI
Little Denmark, PO Box 145, Road Town, Tortola VG1110, British Virgin Islands



From: Andrew King (Sensitive) [mailto:andrew.king@bvi.public-inquiry.uk]
Sent: 30 September 2021 14:21
To: [REDACTED] Hon. Dawn J. Smith <[REDACTED]>; Fiona Forbes-Vanterpool
[REDACTED]; Jo-ann Roberts [REDACTED] Olympitis, Niki
[REDACTED] Haeri, Hussein [REDACTED]; Peaty, Lauren
[REDACTED] Knock, Sara-Jane [REDACTED]
Cc: juienna.tasaddiq@bvi.public-inquiry.uk; Steven Chandler (Sensitive) <steven.chandler@bvi.public-inquiry.uk>;
Rhea Harrikissoon (Sensitive) <rhea.harrikissoon@bvi.public-inquiry.uk>
Subject: RE: 210928 Email to Hon Vincent Wheatley

Dear Hon Vincent Wheatley

The Commissioner has requested that you please give an update on when you will provide a response to his direction contained in point 1. of my email below given that the deadline for doing so was 12 noon today.

The Commissioner is concerned that no request for an extension to that deadline has been made on your behalf by the Attorney General / IRU who are copied into this correspondence.

Best wishes

Andrew King | Senior Solicitor to the British Virgin Islands Commission of Inquiry

Email: andrew.king@bvi.public-inquiry.uk

Address: Room RB 1.11, 22 Whitehall, London SW1A 2EG and BVI International Arbitration Centre 3rd Floor, Ritter House, Wickham's Cay II Road Town, Tortola

You can contact and submit information to the Commission of Inquiry team through the Commission's website at www.bvi.public-inquiry.uk

From: Andrew King (Sensitive)

Sent: 29 September 2021 08:33

To: [REDACTED]; Hon. Dawn J. Smith <[REDACTED]>; Fiona Forbes-Vanterpool <[REDACTED]>; Jo-ann Roberts <[REDACTED]>; Olympitis, Niki <[REDACTED]>; Haeri, Hussein <[REDACTED]>; Peaty, Lauren <[REDACTED]>; Knock, Sara-Jane <[REDACTED]>

Cc: juienna.tasaddiq@bvi.public-inquiry.uk; Steven Chandler (Sensitive) <steven.chandler@bvi.public-inquiry.uk>; Rhea Harrikissoon (Sensitive) <rhea.harrikissoon@bvi.public-inquiry.uk>

Subject: RE: 210928 Email to Hon Vincent Wheatley

Dear Hon Vincent Wheatley

The Commissioner has amended the directions contained in my email to you below. The changes to the directions are identified in blue text.

Best wishes

Andrew King | Senior Solicitor to the British Virgin Islands Commission of Inquiry

Email: andrew.king@bvi.public-inquiry.uk

Address: Room RB 1.11, 22 Whitehall, London SW1A 2EG and BVI International Arbitration Centre 3rd Floor, Ritter House, Wickham's Cay II Road Town, Tortola

You can contact and submit information to the Commission of Inquiry team through the Commission's website at www.bvi.public-inquiry.uk

From: Andrew King (Sensitive)

Sent: 28 September 2021 21:23

To: [REDACTED]; Hon. Dawn J. Smith <[REDACTED]>; Fiona Forbes-Vanterpool <[REDACTED]>; Jo-ann Roberts <[REDACTED]>; Olympitis, Niki <[REDACTED]>; Haeri, Hussein <[REDACTED]>; Peaty, Lauren <[REDACTED]>; Knock, Sara-Jane <[REDACTED]>

Cc: juienna.tasaddiq@bvi.public-inquiry.uk; Steven Chandler (Sensitive) <steven.chandler@bvi.public-inquiry.uk>; Rhea Harrikissoon (Sensitive) <rhea.harrikissoon@bvi.public-inquiry.uk>

Subject: 210928 Email to Hon Vincent Wheatley

Dear Hon Vincent Wheatley

The Commissioner thanks you for giving evidence to the COI today.

The Commissioner has directed that you please provide me with the following ("the Disclosure"):

1. An update on the current status of the belongership applications of [REDACTED] and [REDACTED] by no later than 12 noon on Thursday 30 September 2021;
2. **By no later than 4pm on Friday 1 October 2021, copies of all the papers concerning the application of [REDACTED] which were provided to Cabinet in order to determine the former's application for Belongership on 22 November 2019;**
3. By no later than 4pm on Friday 1 October 2021, copies of any Cabinet Papers (Minutes, Memorandums and Expedited Extracts etc) in which those belongership applications were considered by Cabinet after the Cabinet meeting on 22 November 2019; and
4. **By no later than 4pm on Friday 1 October 2021, confirmation as to whether from 2015 to date, the Cabinet has granted Belongership status to applicants who had served or were serving sentences of imprisonment (whether in the BVI or in other jurisdictions) and/or whose convictions would not fall to be described as "spent" under BVI law and, if so:**
 - (a) **The names of the individuals granted Belongership;**
 - (b) **The dates on which they were granted Belongership**
 - (c) **The nature of the criminal offences committed by the applicant.**

Exercising his powers under section 9 of the Commissions of Inquiry Act, the Commissioner has published two Protocols, one concerning the 'Provision of Documents' to the COI, and the other concerning the 'Redaction of Documents'. They can be found on the COI's website. The Protocols are designed to facilitate the prompt delivery of documents to the COI and help you understand the COI's procedures for the provision of documents, and the redaction of any documents it intends to disclose further.

The Commissioner considers that the Disclosure provided to the COI will be used at a public hearing and further. Accordingly, at the same time as providing the Disclosure you must indicate which part or parts of any documents, you consider should be redacted (including of any personal data). You should do this by providing two copies of the Disclosure. One copy should show the redactions you seek marked but still visible; the other should show the same redactions marked out so that they are no longer visible. Detailed reasons must be given for any proposed redactions.

This email has been copied to the Attorney General and IRU.

Best wishes

Andrew King | Senior Solicitor to the British Virgin Islands Commission of Inquiry

Email: andrew.king@bvi.public-inquiry.uk

Address: Room RB 1.11, 22 Whitehall, London SW1A 2EG and BVI International Arbitration Centre 3rd Floor, Ritter House, Wickham's Cay II Road Town, Tortola

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Ref#: R-

17th December, 2020

[REDACTED]
Road Town, Tortola
British Virgin Islands

Dear [REDACTED]:

I regret to inform you that your applications submitted for the Residence and Belonger Fast Track initiative were not successful; as you have not met the 20 years residing period in the Territory that is specified in the 2004 Immigration Policy.

In light of the above you should continue to renew your entry permit annually.

Please be guided accordingly.

Yours sincerely,

[REDACTED]
Jan Penn
Chief Immigration Officer

IP/gc

From: Inquiry Response Unit - [REDACTED]
Sent: 21 October 2021 01:55
To: Rhea Harrikissoon (Sensitive); Ian Penn; Hon. Dawn J. Smith; Fiona Forbes-Vanterpool; Jo-ann Roberts; Olympitis, Niki; Haeri, Hussein; Peaty, Lauren
Cc: Andrew King (Sensitive); Steven Chandler (Sensitive); Juienna Tasaddiq (Sensitive)
Subject: RE: 211015 Email to Mr Ian Penn [W-EU.FID1849191]

Dear Rhea

We have been asked by Mr Penn to provide you with the below (in black) in response to your email of 15 October:

1. A copy of a blank template application form for the 'Fast Track' belongship process.

The Residence & Belonger Status applications used during the Immigration Regularization Initiative (Fast Track Process) were the same as those currently used for applications under the regular process, this includes the required documents that make up a part of the application. A copy of a Belonger Status Application Form will follow shortly.

2. Confirmation as to which individual in the Immigration Department drafted the letter dated 17 December 2020 that was sent on your behalf to [REDACTED]. That individual should separately provide to me a copy of that letter in its native format (e.g. Microsoft Word) along with an explanation as to how that letter came to be prepared and who authorised them to send it.

The letter addressed to [REDACTED] and all persons who were not successful in their application for Residence and/or Belonger Status were prepared by the Status Unit within the Immigration Department and signed by the Senior Administrative Officer, [REDACTED] for the Chief Immigration Officer, Mr. Ian Penn, which is a function that is usually and properly delegated to the senior officer. As was indicated in a previous submission, there is no available native form (word document) of the letters as they were typed continuously over one draft template, printed, signed and copied prior to distribution and were not saved individually. It has since been noted that due to the haste during preparing of the letters a human error was made in the wording within [REDACTED] letter. The word "denied" should have read "deferred" as this was the only application deferred under the program the oversight was easily made. Under the Fast-Track programme the department was expected to facilitate an unusual process where the collection of funds was concerned. Due to the fact that payment were made upfront it resulted in the need for refunds to take place prior to the end of the fiscal year in 2019. An action such as the issuance of the letters were standard procedure to accompany any form of refund from the Department, as is the case where the refund of Bonds are concerned. Therefore, it was important that the already late refund checks to persons be accompanied by a cover letter. Therefore, there were no specific and direct instructions necessary as this was standard.

Please acknowledge receipt.

Best regards

Sara-Jane
On behalf of the Inquiry Response Unit

From: Rhea Harrikissoon (Sensitive) <rhea.harrikissoon@bvi.public-inquiry.uk>
Sent: 20 October 2021 19:22
To: Ian Penn <[REDACTED]>; Hon. Dawn J. Smith <[REDACTED]>; Fiona Forbes-Vanterpool <[REDACTED]>; Jo-ann Roberts <[REDACTED]>; Knock, Sara-Jane <Sara-[REDACTED]>; Olympitis, Niki <[REDACTED]>; Haeri, Hussein <[REDACTED]>; Peaty, Lauren <[REDACTED]>
Cc: Andrew King (Sensitive) <andrew.king@bvi.public-inquiry.uk>; steven.chandler@bvi.public-inquiry.uk; juienna.tasaddiq@bvi.public-inquiry.uk
Subject: RE: 211015 Email to Mr Ian Penn

Dear Mr Penn

I write with reference to my email below to which the COI does not appear to have received a response.

The Commissioner requests that you please provide an update by return given that the deadline of 4pm today has now passed.

Best wishes

Rhea Harrikissoon

Rhea Harrikissoon | Solicitor to the British Virgin Islands Commission of Inquiry

Email: rhea.harrikissoon@bvi.public-inquiry.uk

Address: Room RB 1.11, 22 Whitehall, London SW1A 2EG

You can contact and submit information to the Commission of Inquiry team through the Commission's website at www.bvi.public-inquiry.uk

From: Andrew King (Sensitive)

Sent: 15 October 2021 11:37

To: Ian Penn <[REDACTED]>; Hon. Dawn J. Smith <[REDACTED]>; Fiona Forbes-Vanterpool <[REDACTED]>; Jo-ann Roberts <[REDACTED]>; Knock, Sara-Jane <[REDACTED]>; Olympitis, Niki <[REDACTED]>; Haeri, Hussein <[REDACTED]>; Peaty, Lauren <[REDACTED]>

Cc: Steven Chandler (Sensitive); Juienna Tasaddiq (Sensitive); Rhea Harrikissoon (Sensitive)

Subject: 211015 Email to Mr Ian Penn

Dear Mr Penn

The Commissioner thanks you for giving further evidence to the COI today.

The Commissioner has directed that you please provide me with the following information by no later than 4pm on Wednesday 20 October 2012:

1. A copy of a blank template application form for the 'Fast Track' belongingship process.
2. Confirmation as to which individual in the Immigration Department drafted the letter dated 17 December 2020 that was sent on your behalf to [REDACTED]. That individual should separately provide to me a copy of that letter in its native format (e.g. Microsoft Word) along with an explanation as to how that letter came to be prepared and who authorised them to send it.

This email has been copied to the Attorney General and IRU.

Best wishes

Andrew King | Senior Solicitor to the British Virgin Islands Commission of Inquiry

Email: andrew.king@bvi.public-inquiry.uk

Address: Room RB 1.11, 22 Whitehall, London SW1A 2EG and BVI International Arbitration Centre 3rd Floor, Ritter House, Wickham's Cay II Road Town, Tortola

You can contact and submit information to the Commission of Inquiry team through the Commission's website at www.bvi.public-inquiry.uk

Applications for Certificates of Residence Status - January, March and April, 2021

Signed

· 13 May 2021 · MNRLI · File: ADM1/112 · Ms. Nadia Demming-Hodge
· Memo No. 262/2021 · Extract No. REx/262/2021 (/decisions/742)

Background Information

1) Section 18 (1) of the Immigration and Passport Act provides that after consultation with the Board of Immigration, Cabinet may grant a Certificate of Residence to any person who applies for the same in the manner prescribed Immigration Policy Guidelines (see **Appendix A**) require the Board to make recommendations for Residence Status for persons who have lived continuously in the Territory for over 20 years, and who do not possess a Criminal Record qualify after the normal screening process. In relation to items (d) and (e) of the policy, Cabinet has since moved away from the capped number of approvals per year to address the outstanding backlog of applications.

2) The Board of Immigration continue to express their concern in relation to the number of persons meeting the qualifying years for Residence Status. Therefore, an intended effort was made to process as much applications within the first quarter of this year to reduce the "back log". In their meetings of 26th January, 23rd March and 13th and 29th April, 2021; a total of 188 applicants for Certificates of Residence were considered. All applicants have resided in the Territory continuously for more than 20 years. Most persons were exempted from Work Permit. After normal screening of their files, criminal background checks and cultural exam, they were recommended for the grant of Certificates of Residence as illustrated in **Appendix B**.

3) Applicant [REDACTED] was not recommended. The Board recognised that although [REDACTED] has resided in the Territory for over 20 years, a criminal record exists, the offenses are as follows: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] As stipulated in Section 18(1)(a) a person receiving certificate of residence should be of good character, and therefore these persons should not hold any criminal record within the Territory. Attached at **Appendix C** is [REDACTED] profile, as well as her Police Certificate at **Appendix C(i)**.

4) **Appendix D** contains excerpts from the minutes of the meetings held by the Board of Immigration on 26th January, 23rd March and 13th and 29th April, 2021.

Purpose

5) To allow for persons who have resided in the Territory for 20 years, consecutively, to be granted Residence Status.

Cross-Ministry Consultation

6) Due to the nature of this Paper Cross-Ministry consultation is not needed.

Financial Implications

7) As was mentioned in the paper there would be a slight decrease in work permit fees because a few were still paying. However, it is believed that with this new status there will be other economic benefits contributing to the economy.

Legal Implications

8) We have reviewed the Paper and have discerned no adverse legal implications which would arise if Cabinet is minded to decide in accordance with the decision sought.

9)

Budget

10) Cabinet should note that though the BVI Government will not see a great loss of revenue as it relates to work permit fees as most persons have already obtained work permit exemptions and have not contributed to work permit fees for an extended period, minimal loss will be realised for those still on work permit. However, the only consistent revenue to be directly lost is that of twenty-five dollars (\$25.00) paid to the Immigration Department each year for renewal of their entry permit (immigration time). Furthermore, it is projected that greater contributions will be derived through differing forms, such as investments in local property and homes, contributions to society and communities, and business ventures. These types of financial injection into the BVI economy will far surpass any loss of revenue from work permits, work permit exemptions and all other related fees.

Communication Strategy

11) All applicants for Residence Status will be notified of their approval and will be presented with a certificate and card following Cabinet's approval.

Conclusion

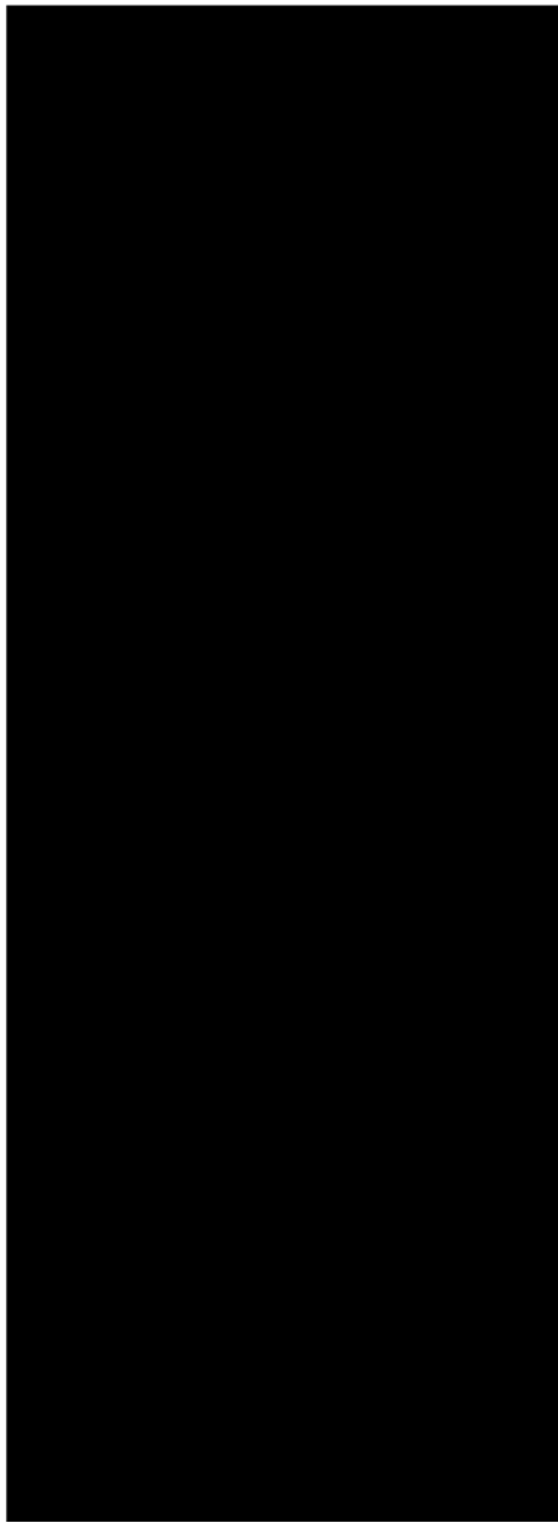
12) Members are asked to consider and concur with the decision sought.

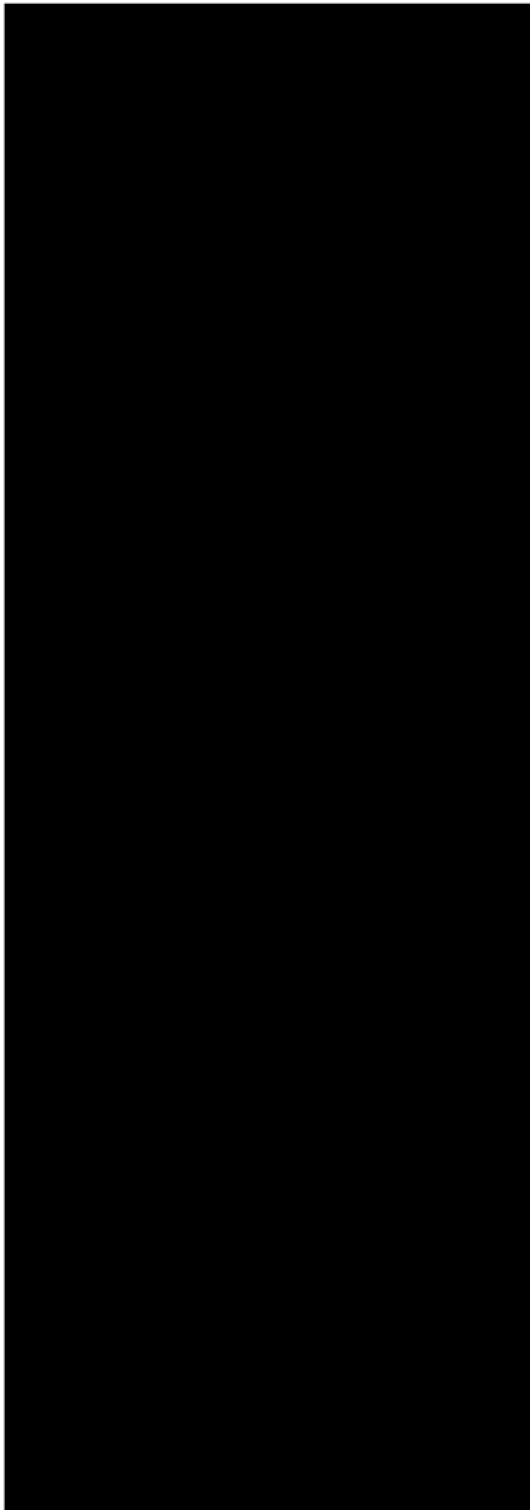
Decision Sought

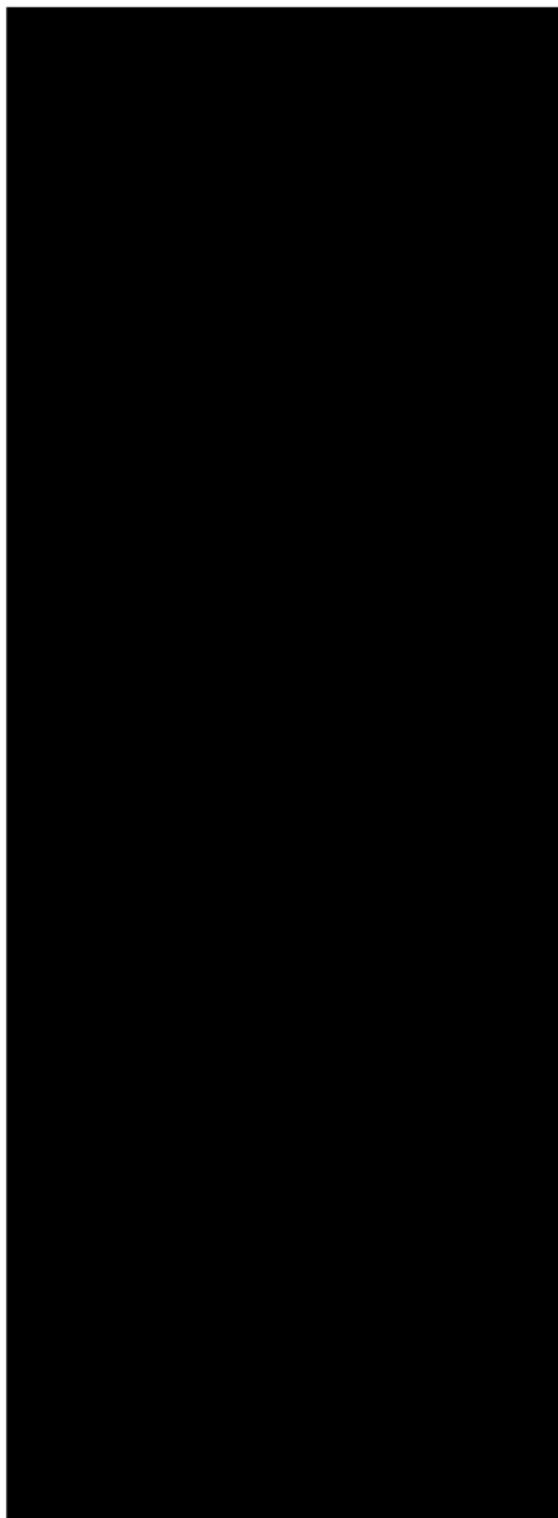
Cabinet is invited to:

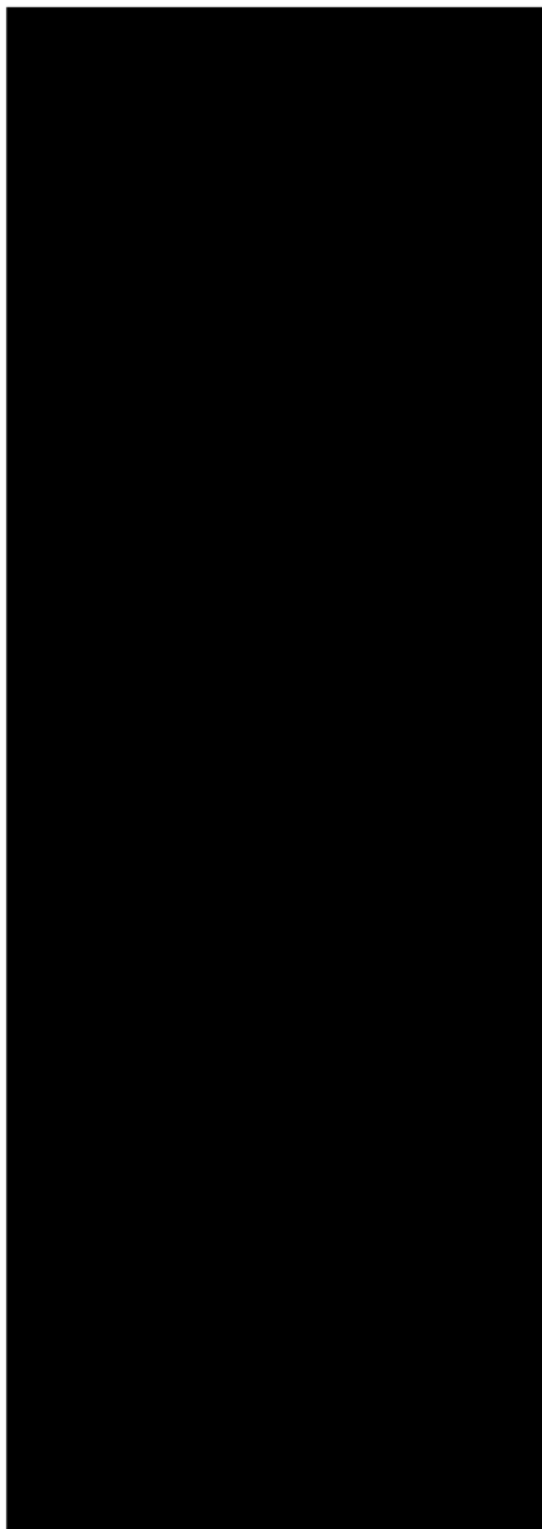
- a. review the recommendations of the Board of Immigration in respect of applicants for Certificates of Residence;
- b. accept the recommendations of the Board of Immigration to grant Certificates of Residence to the following one hundred eighty-eight (188) persons, in accordance with Section 18(1) of the Immigration and Passport Act;





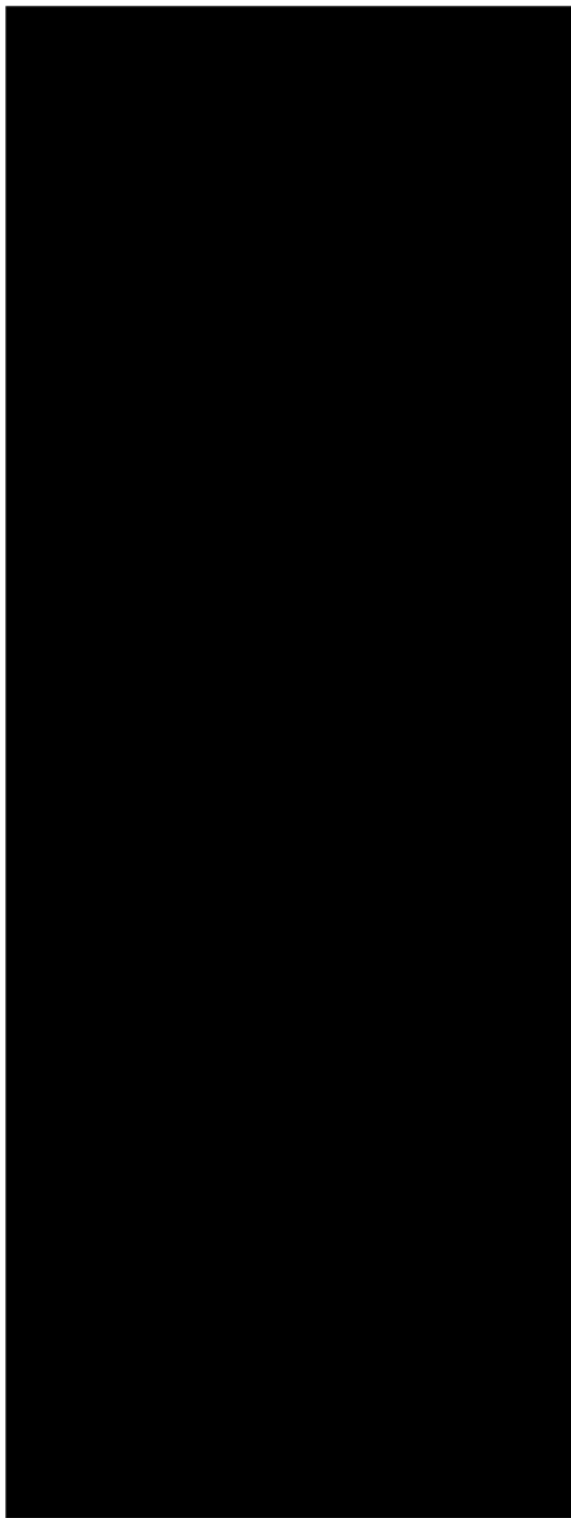


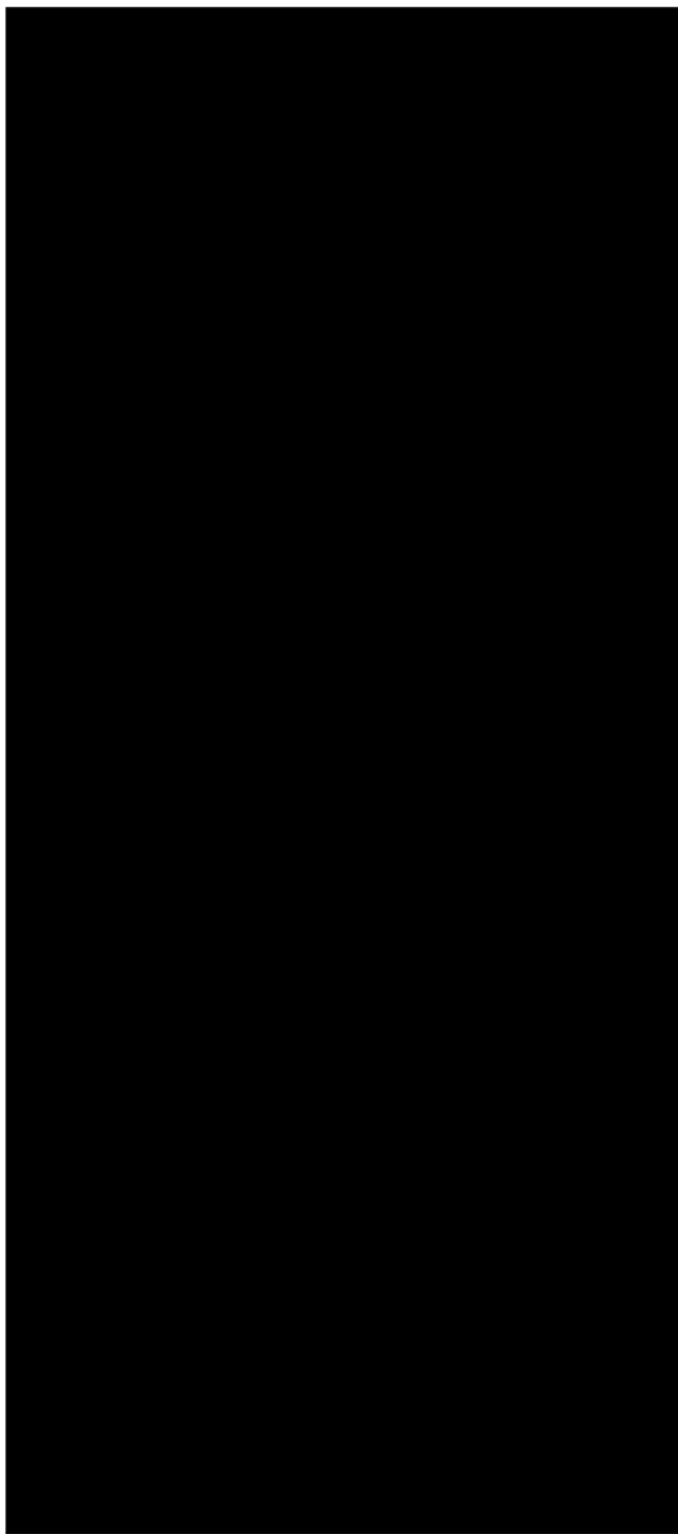


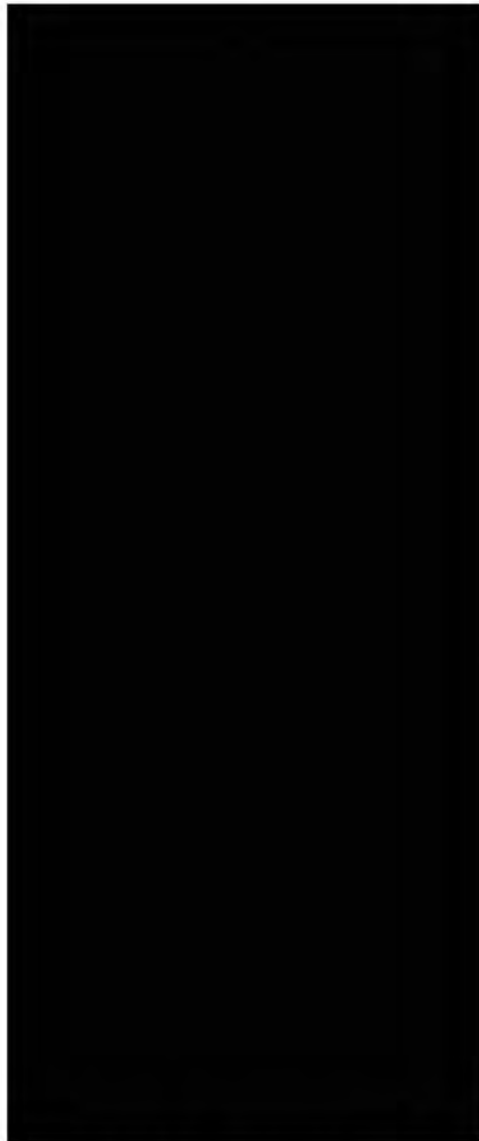












c. accept the recommendation of the Board of Immigration not to grant a Certificate of Residence to the following person, in accordance with Section 18(1) of the Immigration and Passport Act;

i. 

d. direct that the Immigration Department communicates Cabinet's decision to the respective applicants in a timely manner; and

- e. decide that an expedited extract be issued to allow the decision of Cabinet to be acted upon before the confirmation of the Minutes.

Recipients: Attorney General, AGC; Financial Secretary, MOF;

Hon. Vincent Wheatley
Minister for Natural
Resources, Labour and
Immigration
14 June 2021

CABINET MEETING NO. 26 OF 2021

- **Published**

- 23 June 2021

- Financial Services Commission's Conference Room, Road Town

- Agenda No: [C/2/AGEN/26/2021](#)

Present

The Governor and Chairman	H.E. John J. Rankin, CMG
The Premier and Minister of Finance	Hon. Andrew A. Fahie
Deputy Premier and Minister for Education, Culture, Youth Affairs, Fisheries and Agriculture	Dr. the Hon. Natalio Wheatley
Minister for Transportation, Works and Utilities	Hon. Kye Rymer
Minister for Natural Resources, Labour and Immigration	Hon. Vincent Wheatley
Minister for Health and Social Development	Hon. Carvin Malone
Attorney General	Hon. Dawn J. Smith

Cabinet Officials

Cabinet Secretary

Ms. Sandra Ward

Cabinet Support

Assistant Secretary

Mrs. Bethsaida V.
Smith-Hanley

In Attendance

Acting Permanent Secretary

Ms. Tasha TKB Bertie

For Agenda Item: Memo No.
272/2021

Acting Chief Medical Officer,
Ministry of Health and Social
Development

Dr. Ronald Georges

For Agenda Item: Memo No.
272/2021

Acting Chief Executive Officer,
BVI Health Services Authority

Mrs. Patricia Malone-
Smith

For Agenda Item: Memo No.
272/2021

Acting Director, Disaster
Management

Mr. Jasen Penn

For Agenda Item: Memo No.
272/2021

Director of Communications

Dr. Arlene T. Penn

For Agenda Item: Memo No.
272/2021

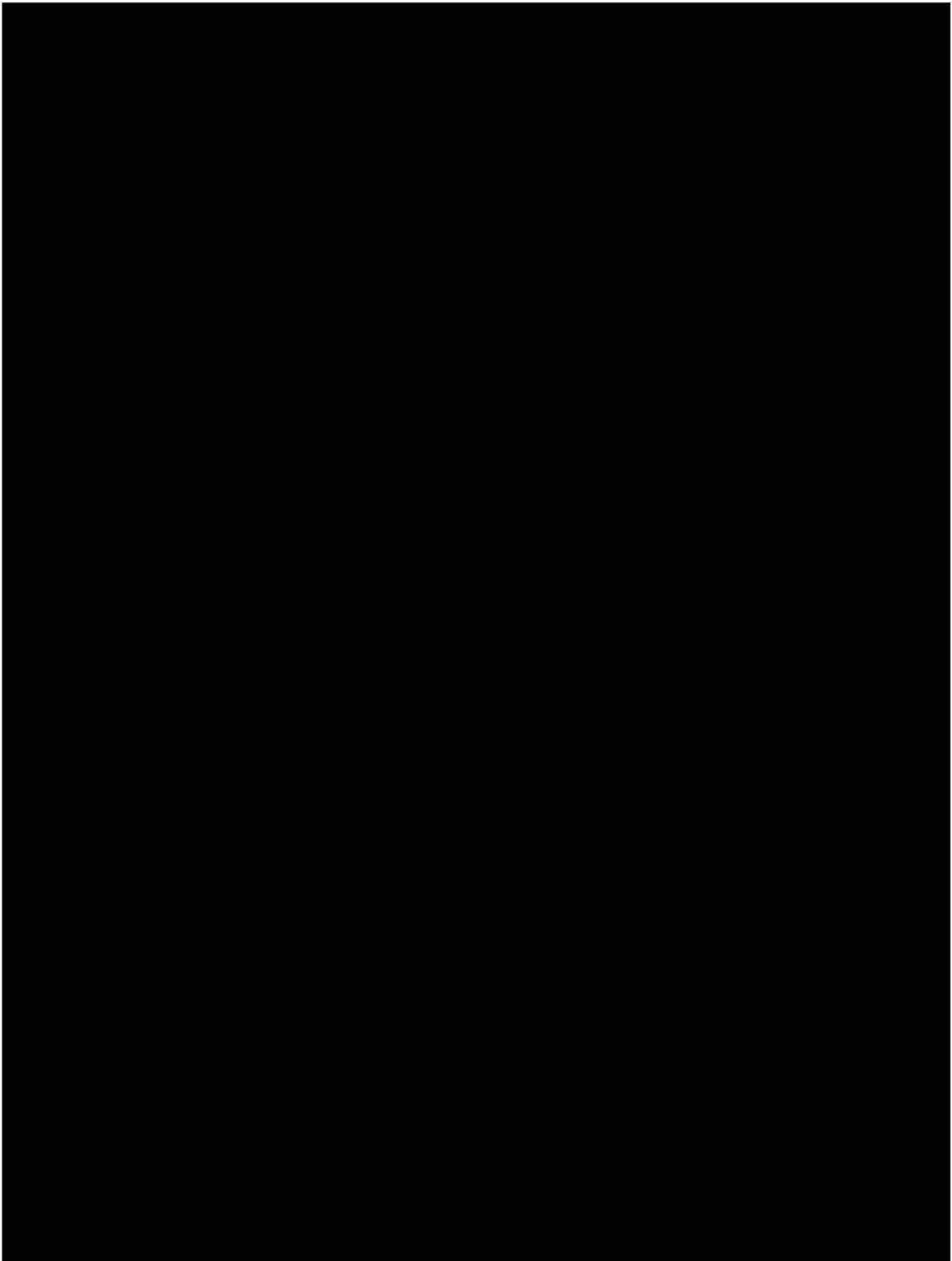
Commencement and Opening Prayer

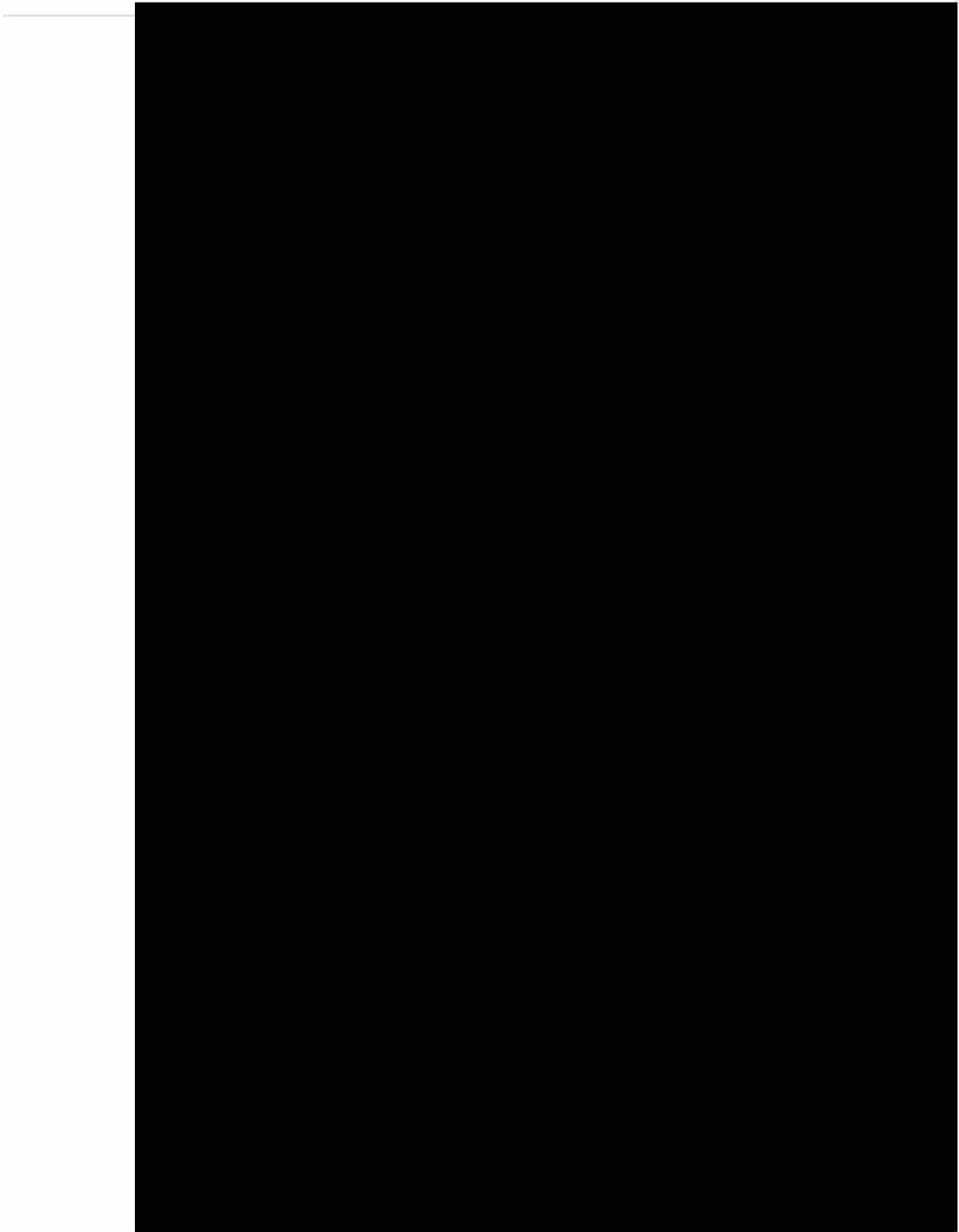
The Chairman called the meeting to order at 9:48 a.m. The prayer was said by the Cabinet Secretary.

Matters Arising

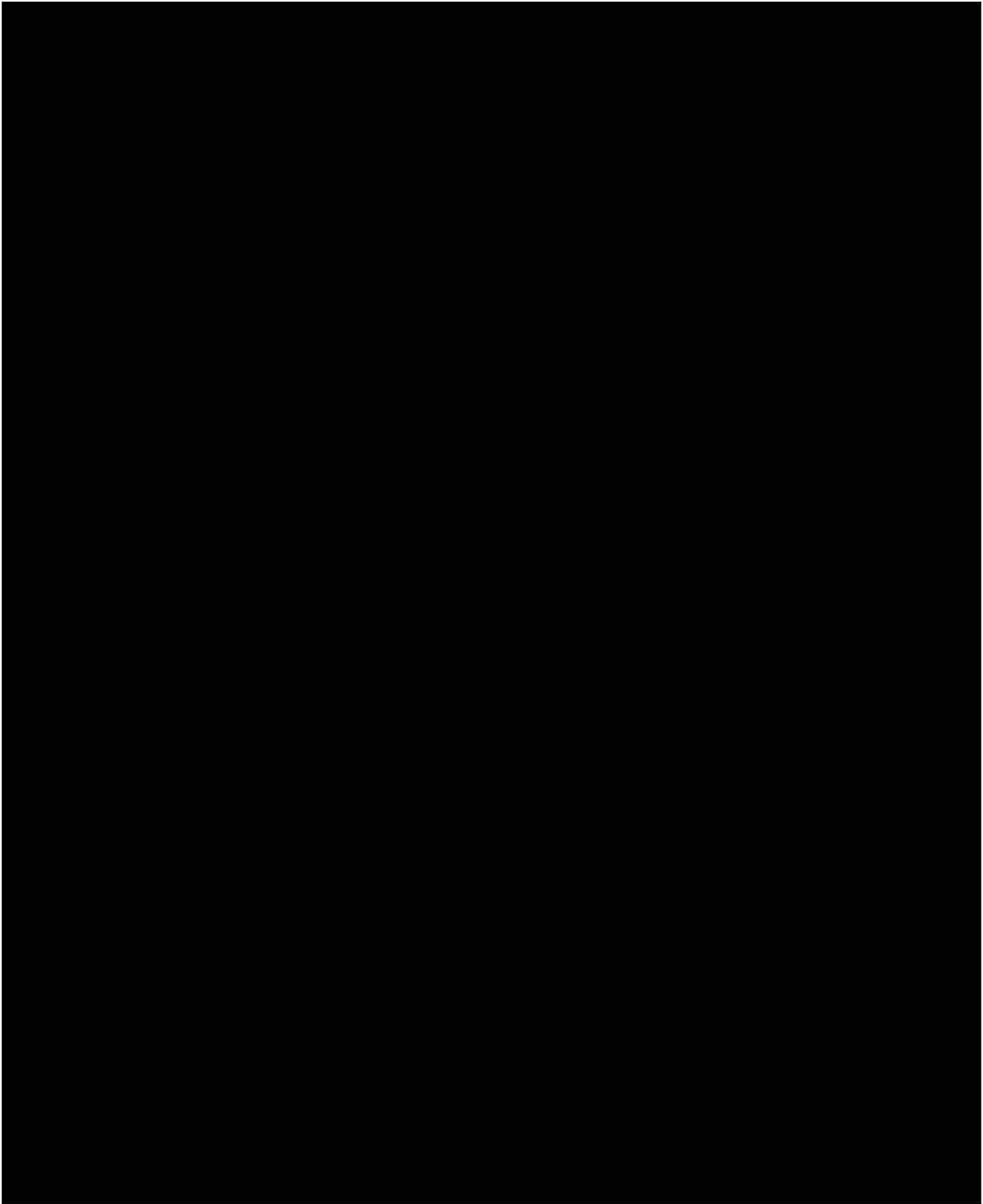
There were no matters arising from the Minutes.

Matters for Consideration









Deliberations

21. The captioned was deferred from the meeting of 16th June, 2021.

22. The paper was considered at the 23rd June, 2021 meeting.

23. Following up from last week's discussion, the Minister for NRL and Immigration said that he had further researched the matter on the applicant, [REDACTED] and had discovered that she did not serve a jail term. He added that her police record showed that she was charged because of her association with an offender.

24. The Chairman acknowledged the Minister's comments but reiterated his position that if [REDACTED] applied to become a BOTC by naturalisation, he would not approve her application at this time. He said that records show that [REDACTED] was convicted of an offence and that it was unlikely that the courts would have found her guilty, if the matter was only by association.

25. The Premier supported that [REDACTED] be afforded a second chance in light of the circumstances that her crime was by association. He added that looking at the facts, it would seem prudent to deny the application; however, considering [REDACTED] family situation, the Premier was inclined to afford her a chance.

26. The Chairman asked the AG to remind the Cabinet of section 18.1 of the Immigration and Passport Ordinance.

27. The Chairman stressed that the courts would have found reason to convict [REDACTED] and if there was no evidence, she would not have been convicted. The proposed approach was also directly contrary to the recommendation of the Immigration Board.

28. The Deputy Premier and Minister for Education stated that good character was not absolute. He added that there was a difference between poor character and a lapse in judgment.

29. Members concluded that the subject Minister had carried out the required and adequate assessment of the matter at hand. Therefore, they were satisfied that [REDACTED] application should be reconsidered.

30. The AG said there was scope for the Cabinet to decide based on the paper before them.

31. There was consensus not to accept the Board's recommendation but instead for the Cabinet in its discretion to grant a Certificate of Residence to [REDACTED]

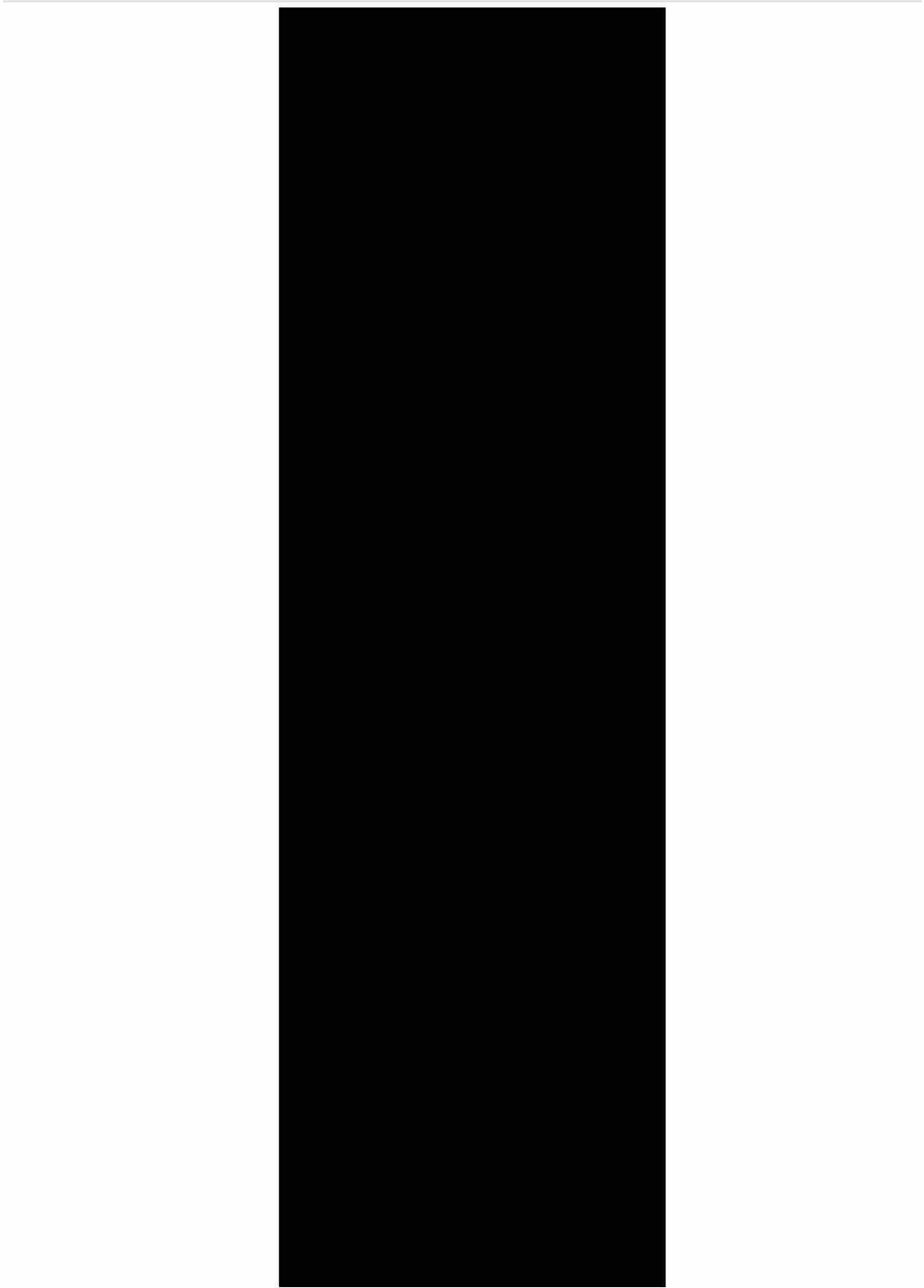
32. It was noted that items c. and d. of the decision sought would be amended accordingly.

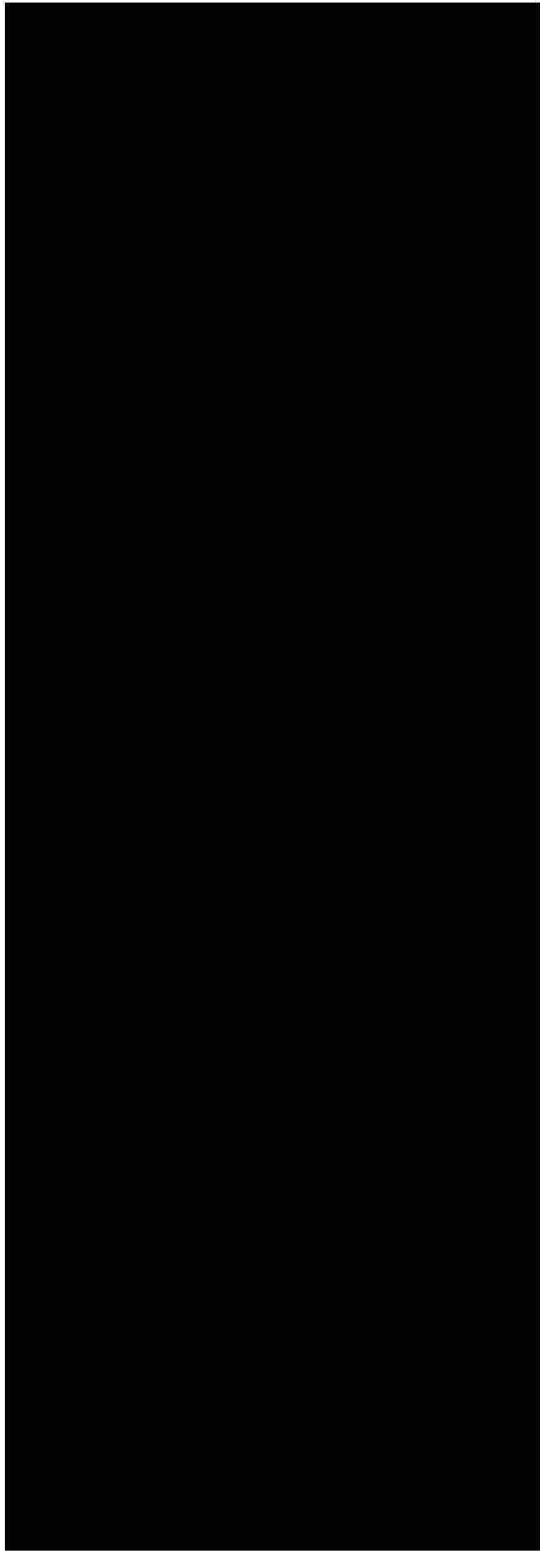
Decision Sought

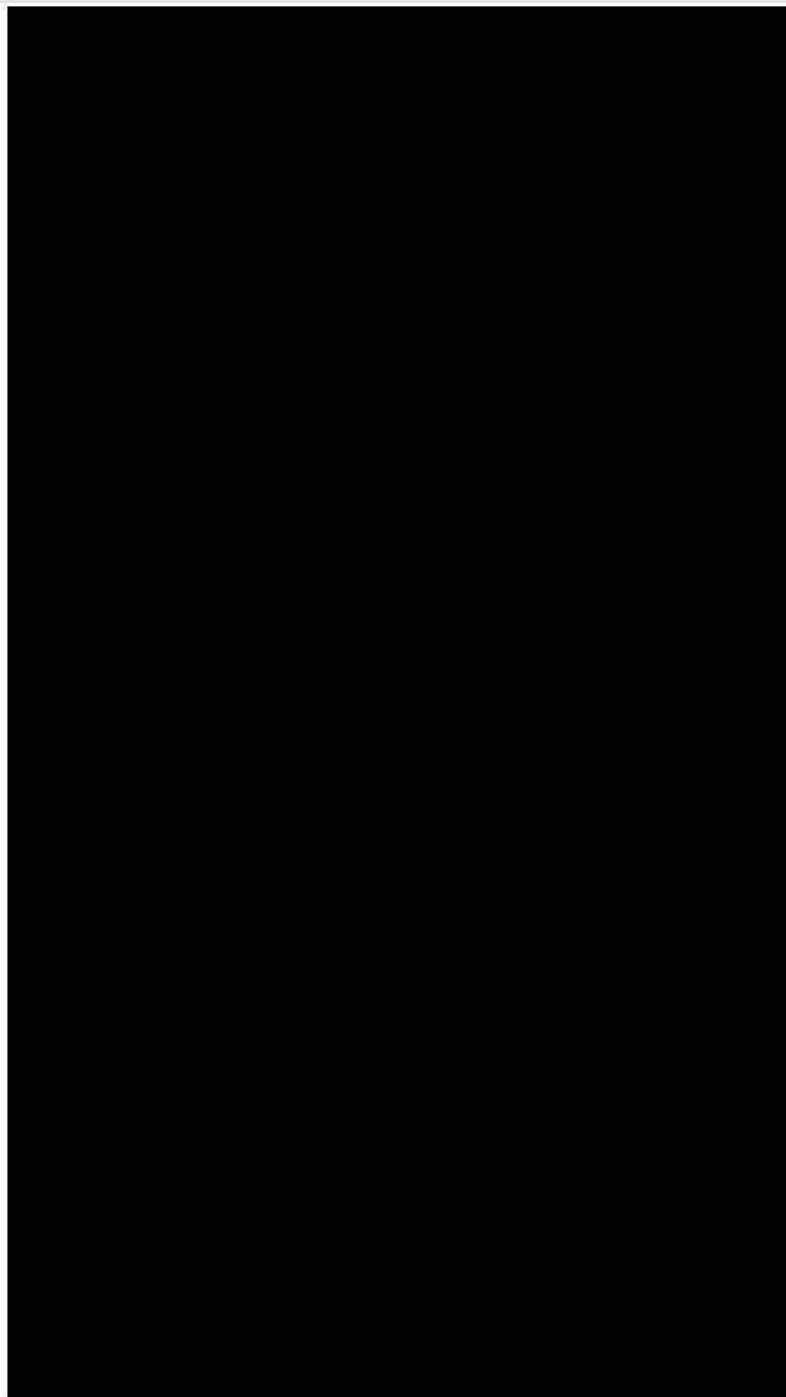
33.Cabinet:

- a. reviewed the recommendations of the Board of Immigration in respect of applicants for Certificates of Residence;
- b. accepted the recommendations of the Board of Immigration to grant Certificates of Residence to the following one hundred eighty-eight (188) persons, in accordance with Section 18(1) of the Immigration and Passport Act;



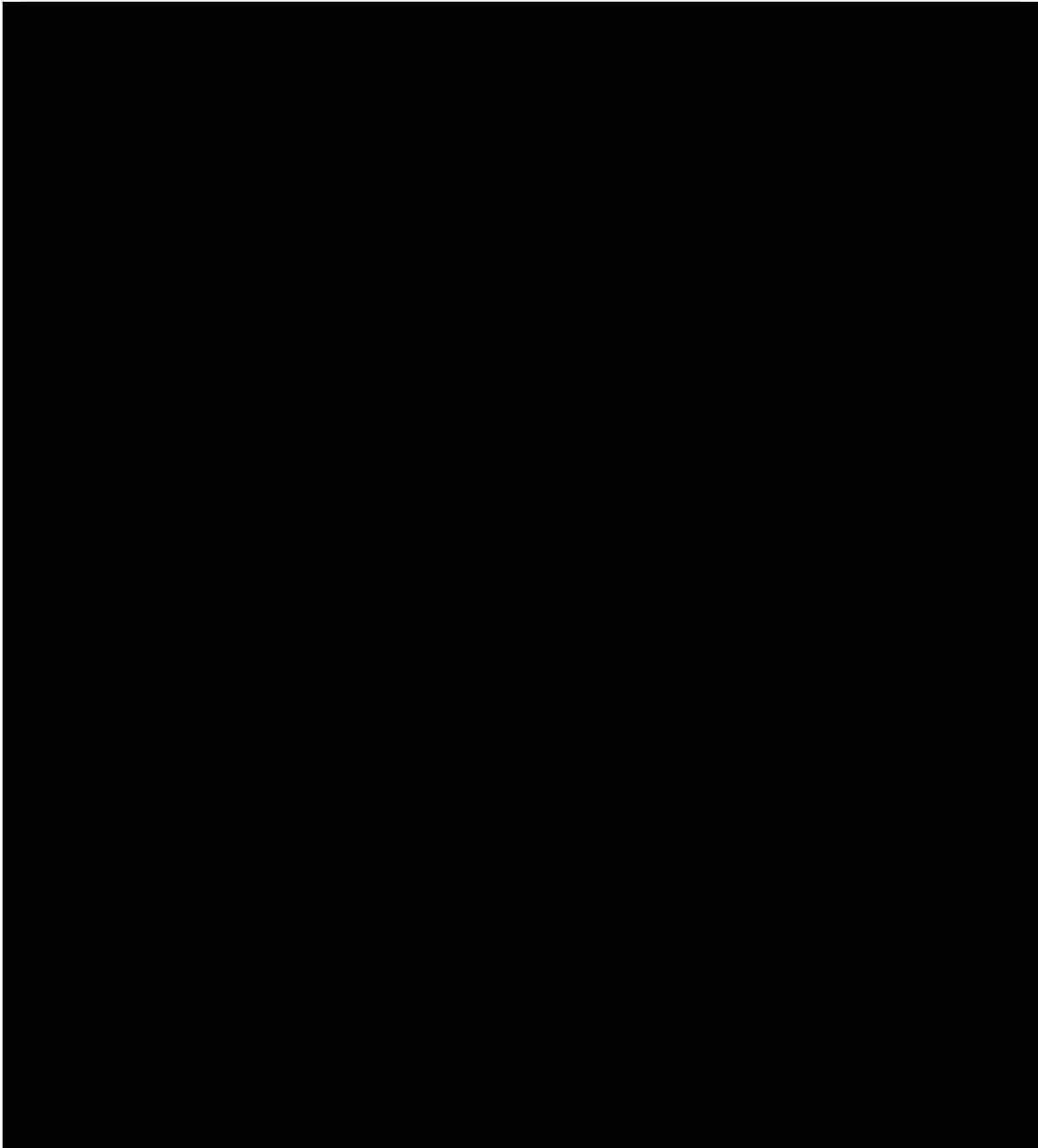


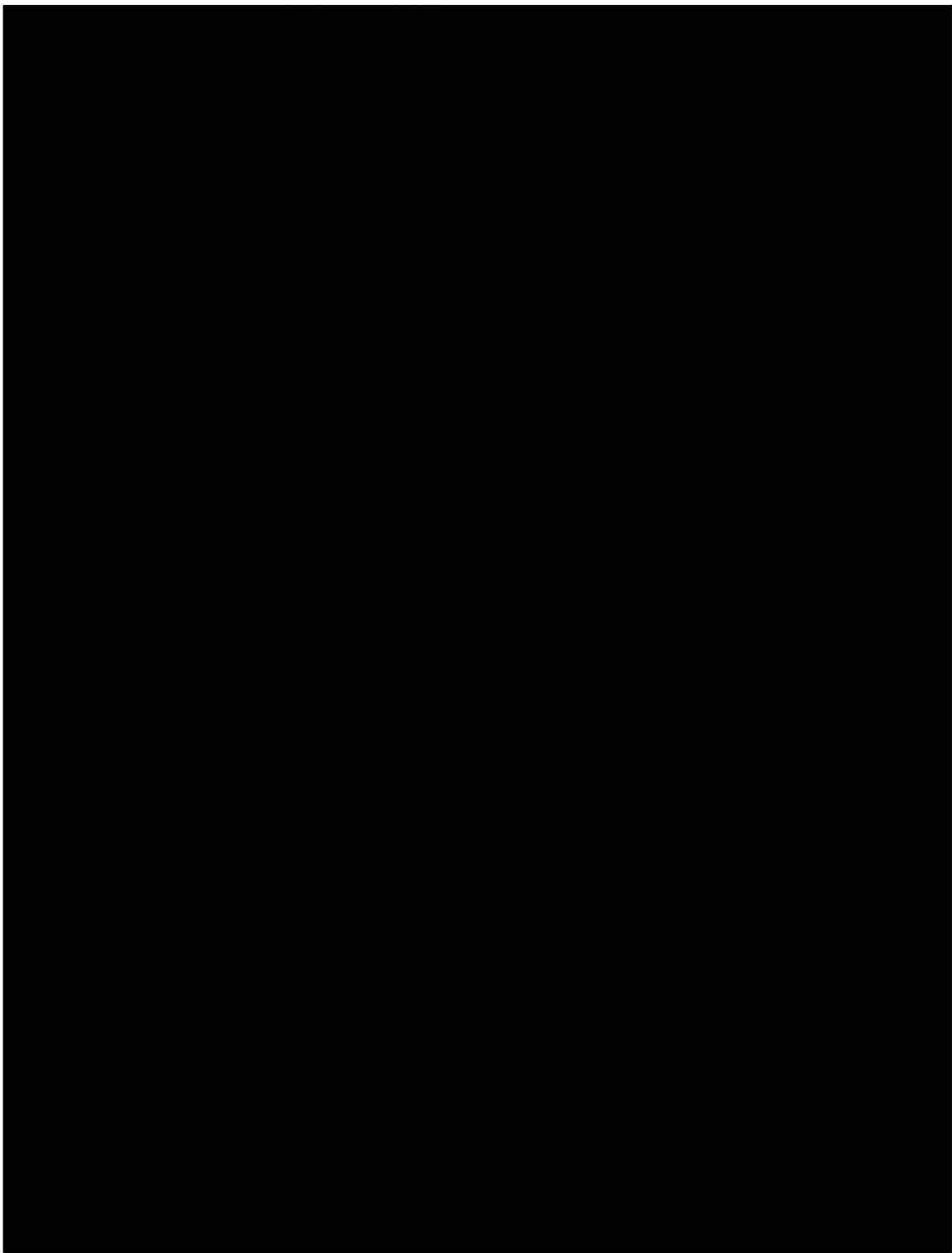


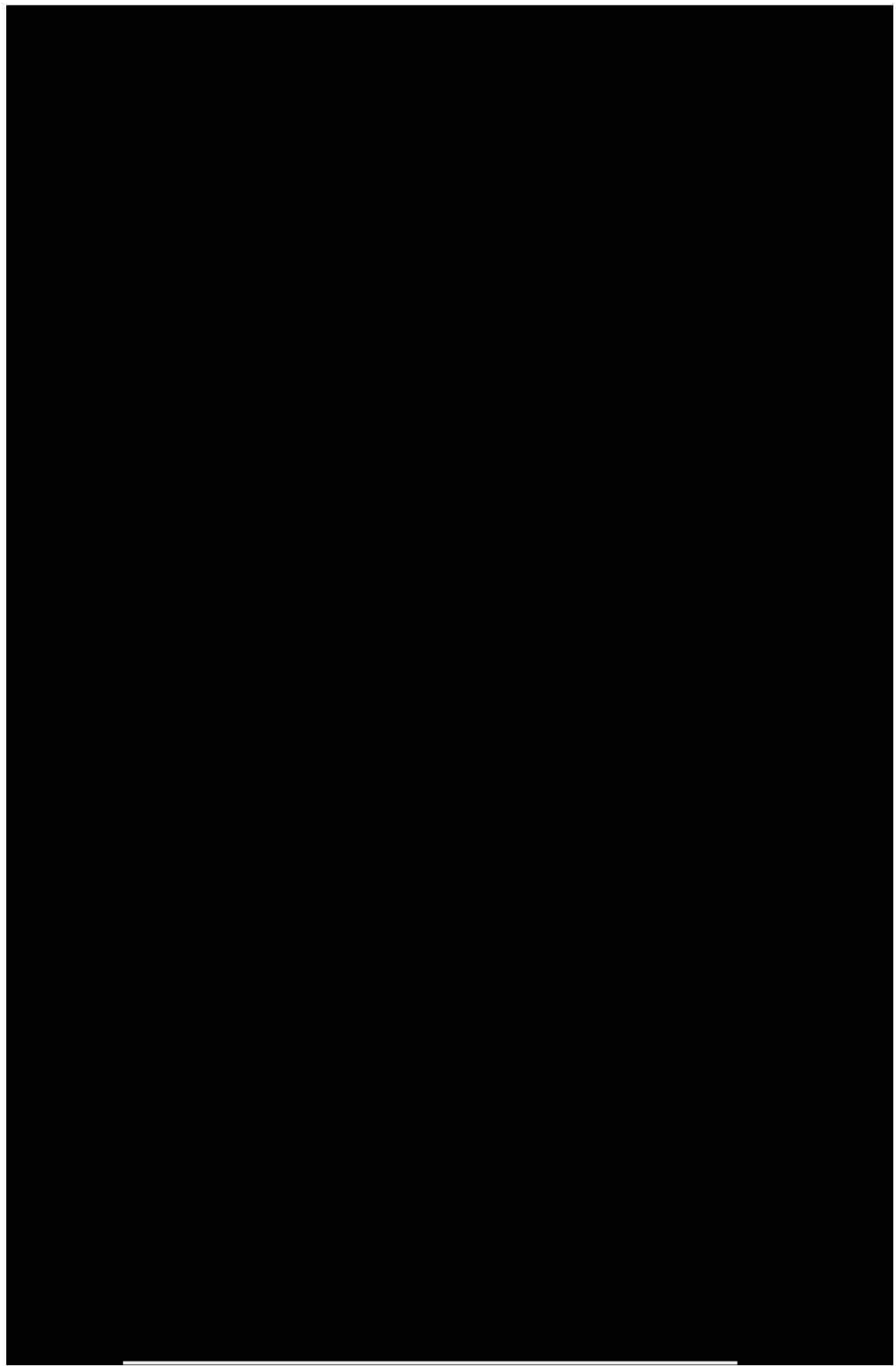


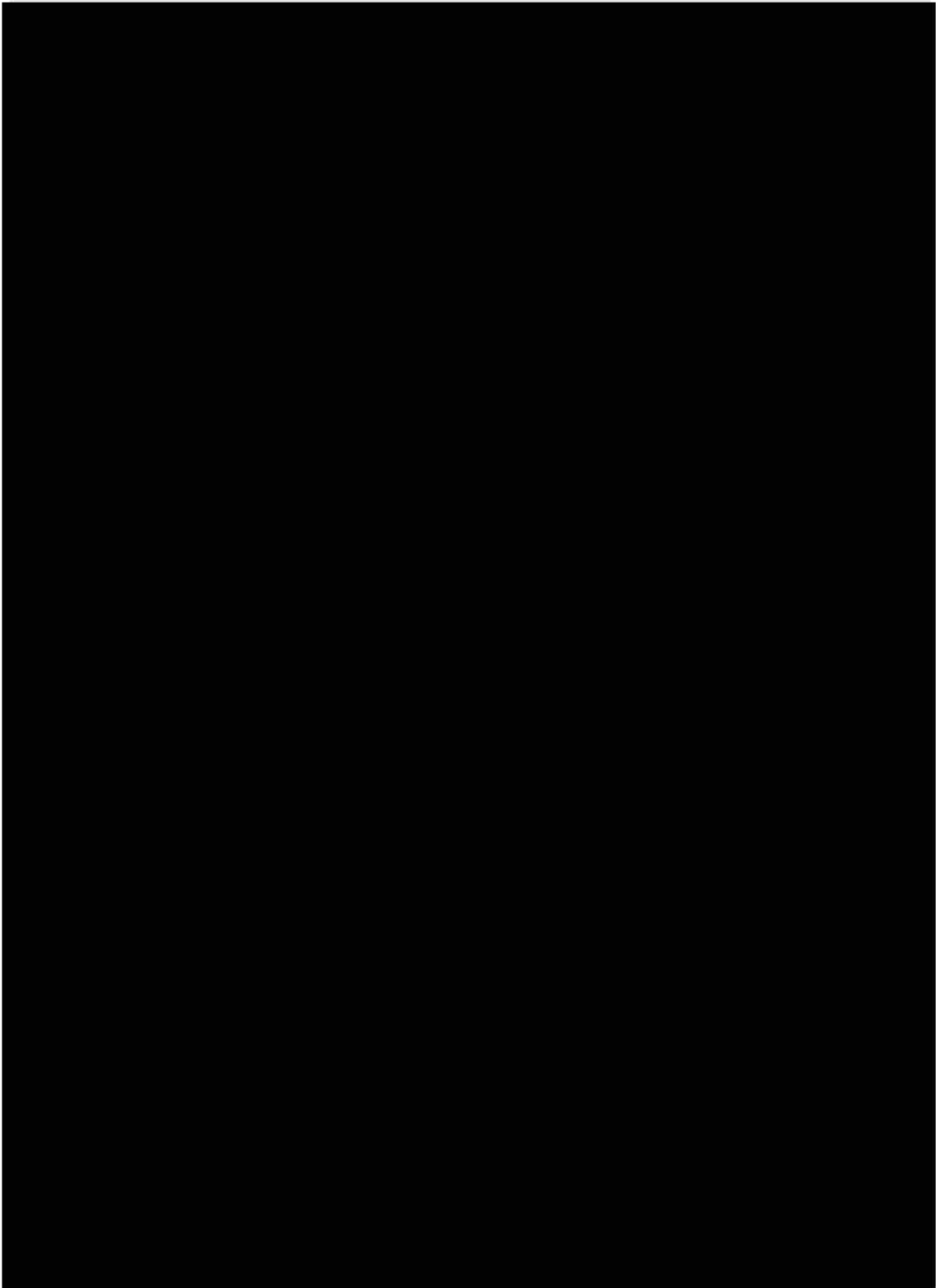
- c. decided not to accept the recommendation of the Board of Immigration not to grant a Certificate of Residence to [REDACTED] in accordance with Section 18(1) of the Immigration and Passport Act;

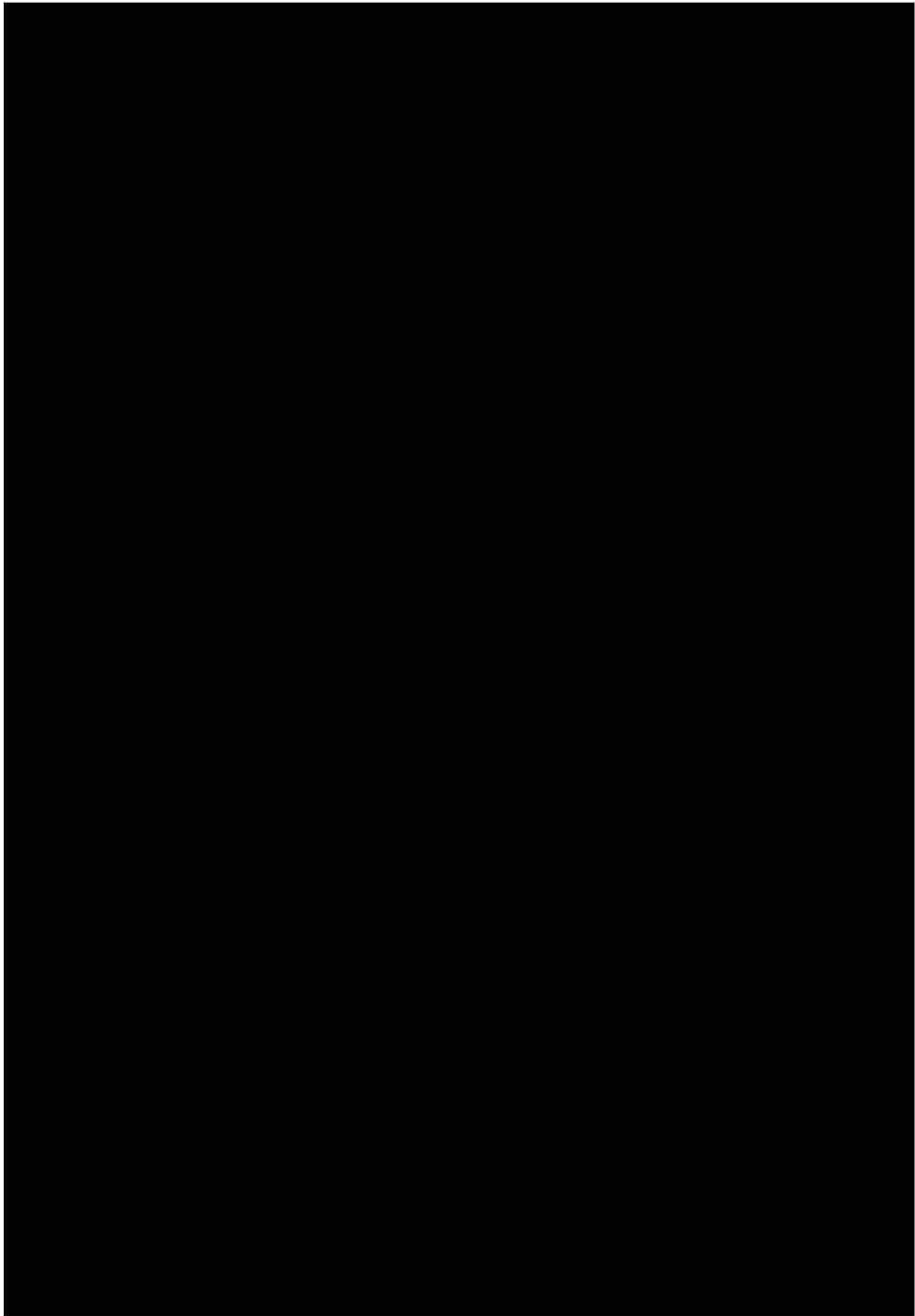
-
- d. decided in its discretion to grant a Certificate of Residence to [REDACTED]
[REDACTED] and
 - e. decided that an expedited extract be issued to allow the decision of Cabinet to be acted upon before the confirmation of the Minutes.

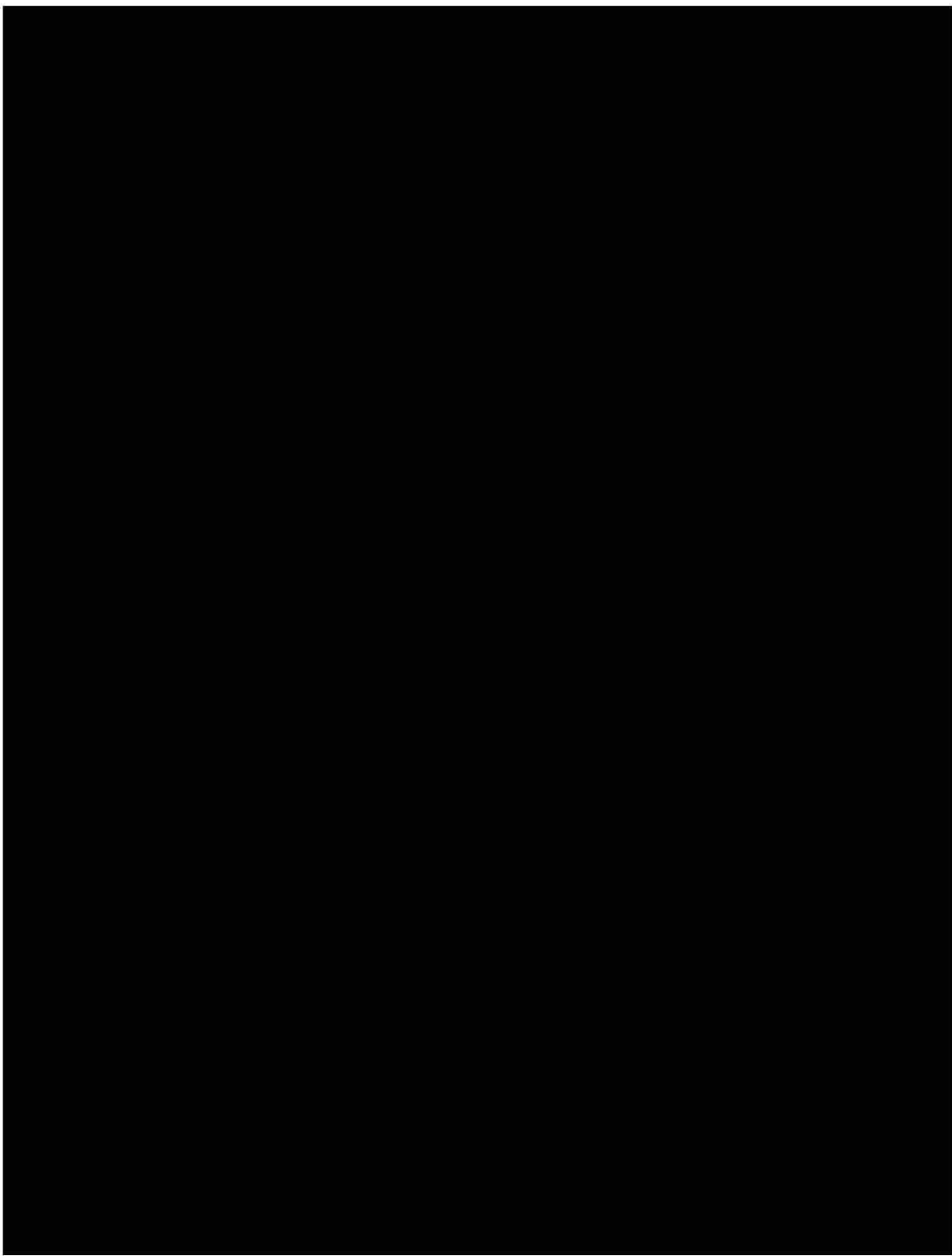


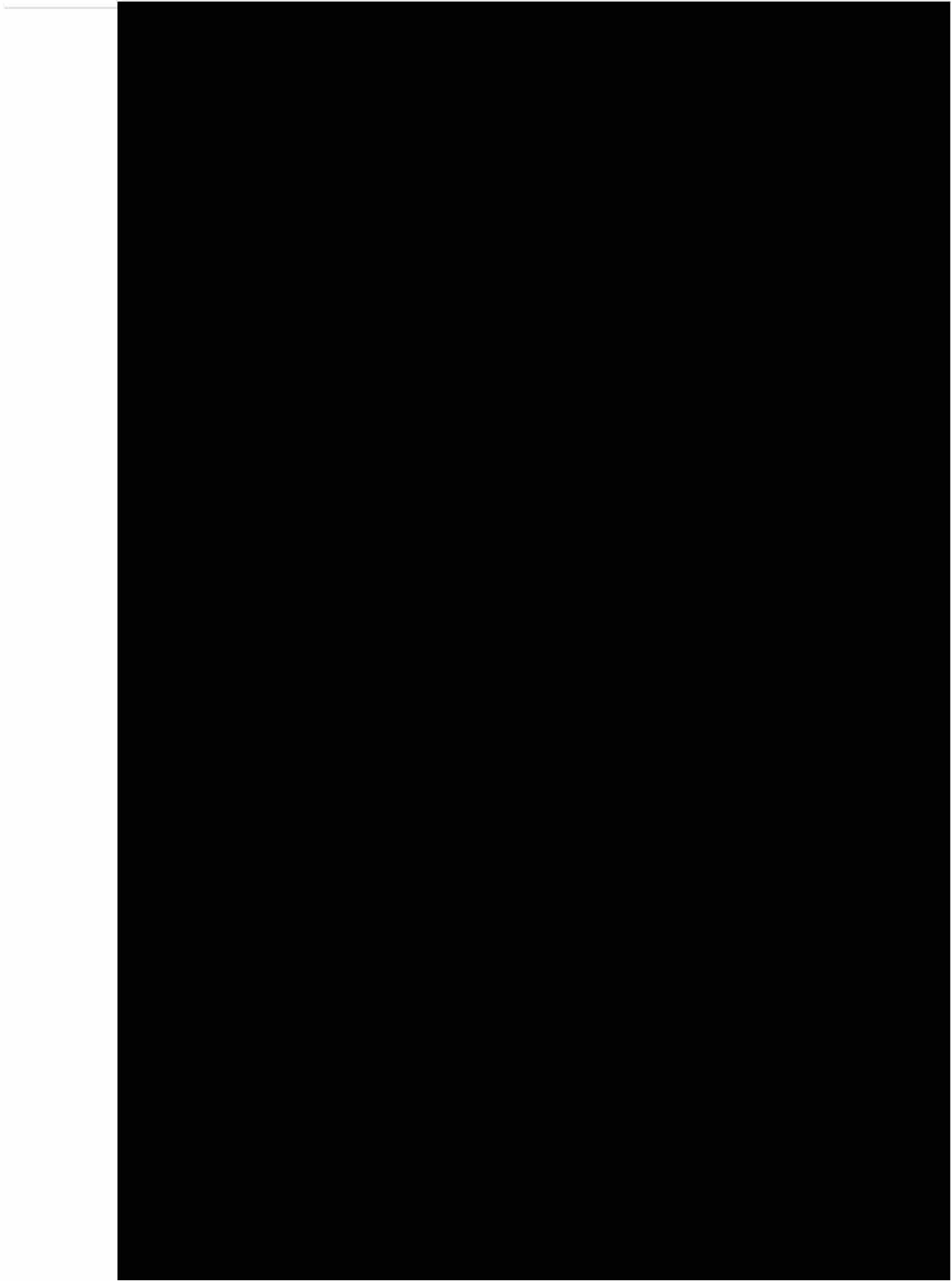


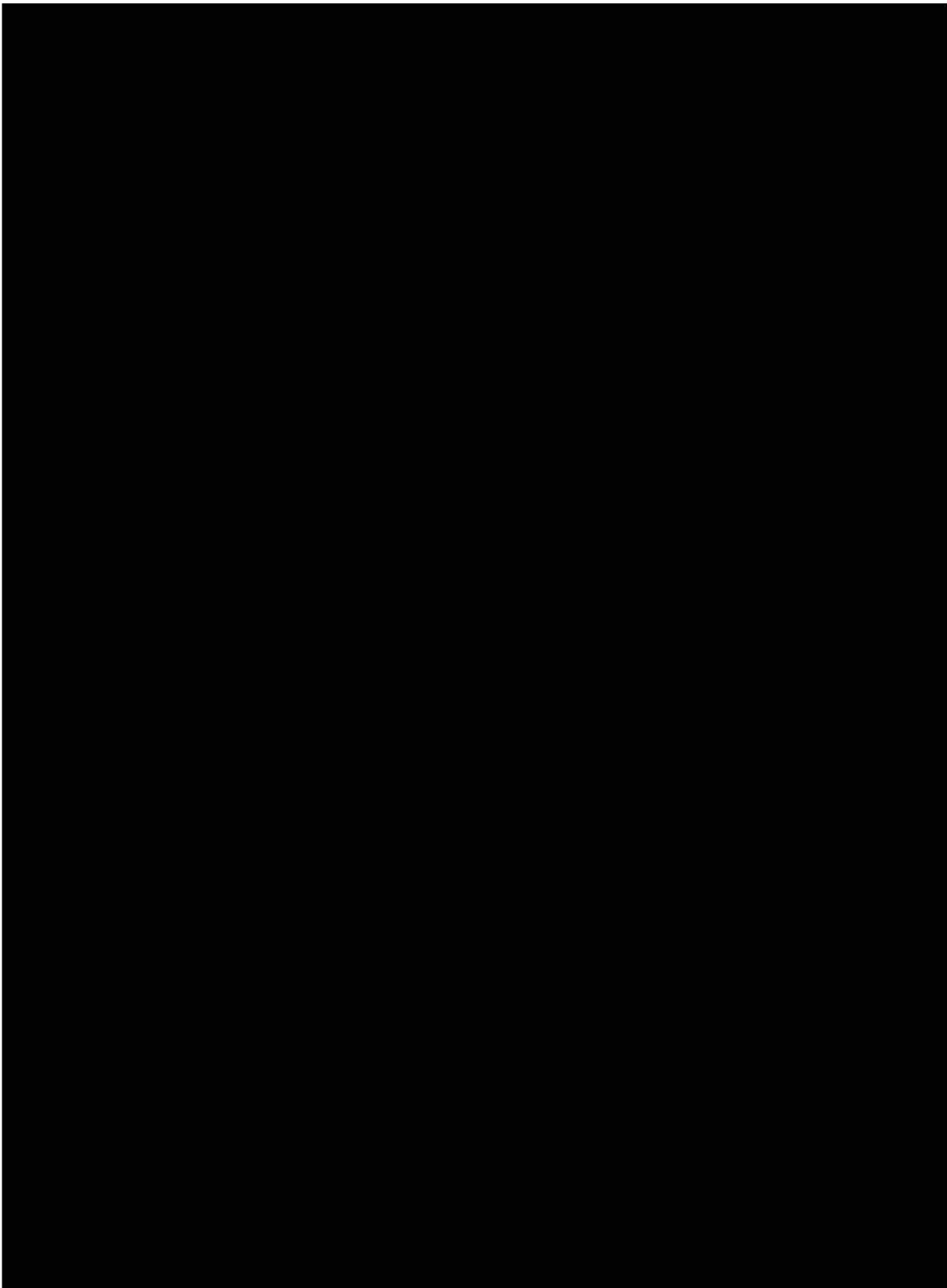








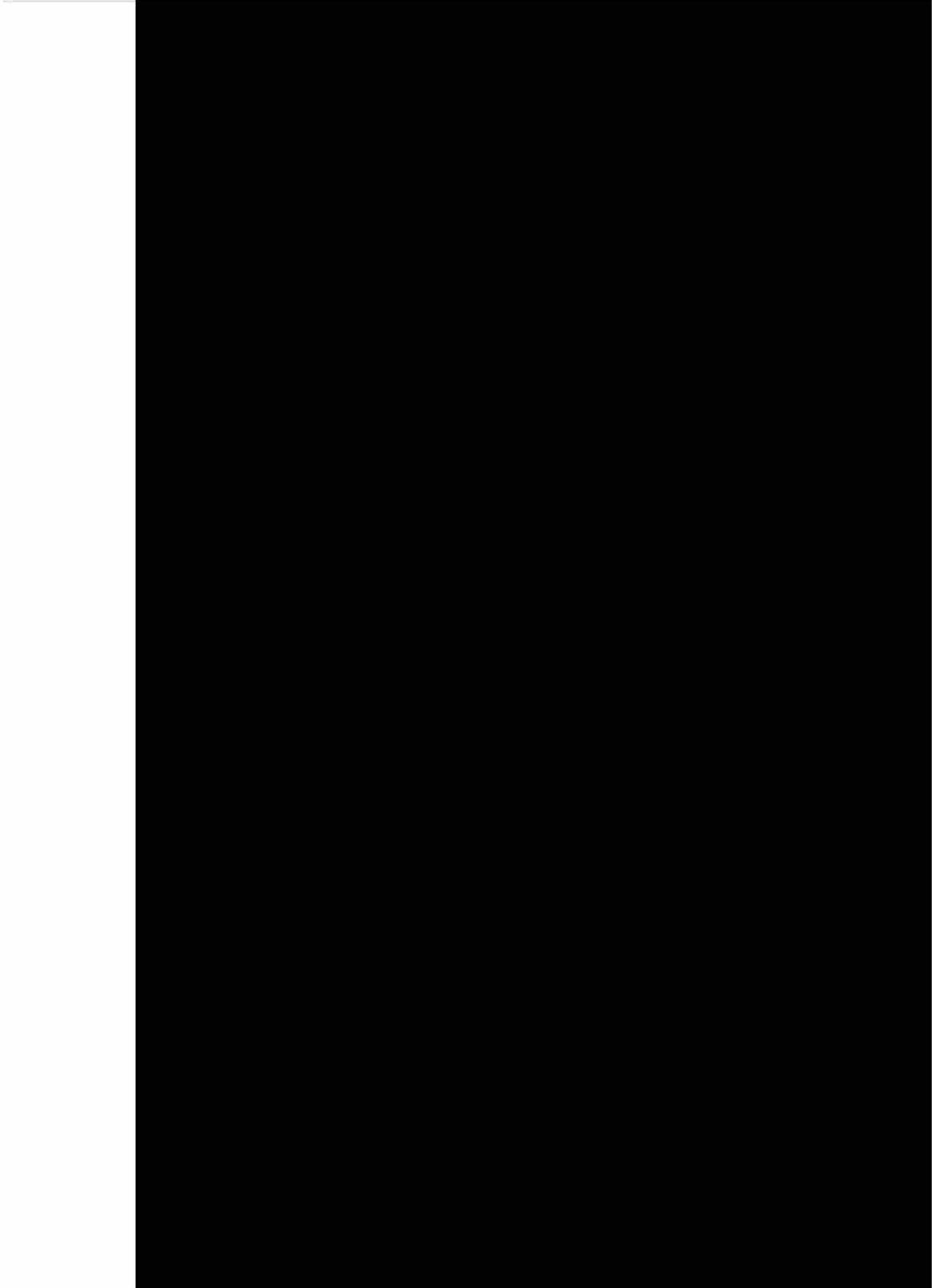


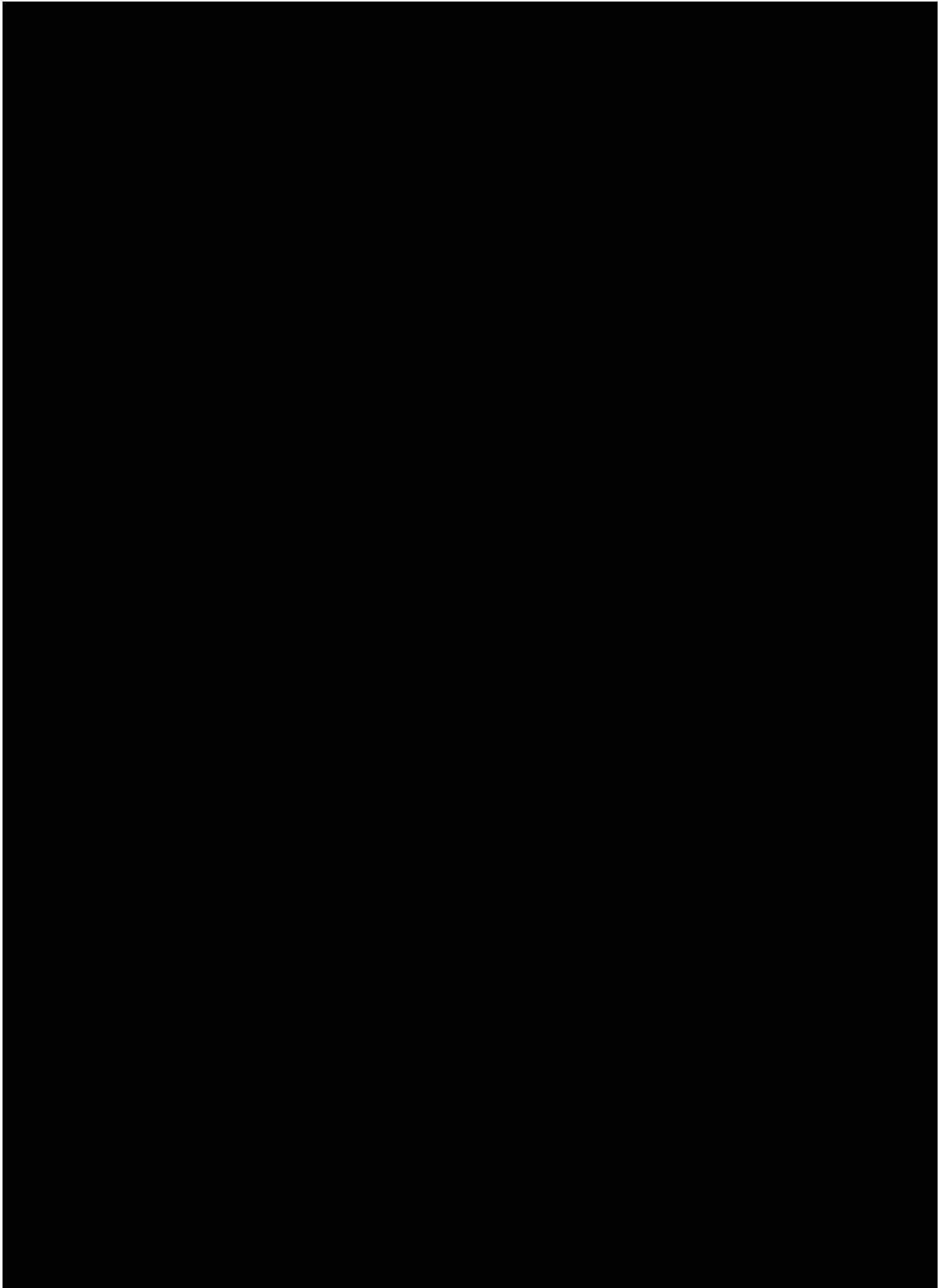














Adjournment

There being no further matters for consideration, the Chairman adjourned the meeting at 2:23 p.m.

Mrs. Vicki Samuel-Lettsome
Deputy Cabinet Secretary
for Ms. Sandra Ward
Cabinet Secretary
09 July 2021