

REVIEW OF THE SCHEDULE OF FREE MOVEMENT OF PERSONS

Introduction

Article 45 – Movement of Community Nationals – highlights that “Member States commit themselves to the goal of free movement of their nationals within the Community.” The free movement of CARICOM nationals within the Community can be divided in two broad areas, namely:

- (i) free movement to undertake economic activities; and
- (ii) facilitation of travel.

In both areas based on provisions enshrined in the Revised Treaty of Chaguaramas and successive decisions of Community Organs, in particular the Conference of Heads of Government, substantive policies / regimes have been developed.

The free movement to undertake economic activities can be divided in three broad sub-areas, namely:

- (i) free movement of skills;
- (ii) free movement to exercise the right of establishment / commercial presence;
- (iii) free movement to exercise the right to provide services on a temporary basis

The focus of this agenda item – Review of the Schedule of Free Movement of Persons - will be on the free movement of skills.

The free movement of skills

What is the free movement of skills?

Article 46.1 of the Revised Treaty provides for the Movement of Skilled Community Nationals, better known as the free movement of skills. The free movement of skills basically grants eligible categories of CARICOM Nationals the right to seek employment

in other Member States. It thus caters for eligible categories of CARICOM Nationals to enter other Member States to seek employment as a wage earner or non wage earner and once found to engage in gainful employment without the need to obtain a work permit.

Approved procedure for free movement of skills

In order to facilitate the exercise of the right to free movement of skills the CARICOM National and Member State(s) must follow steps:

- (i) apply for a Certificate of Recognition of CARICOM Skills Qualification, also known as Skills Certificate, by completing the application form and submitting relevant documents to the Competent Authority on Free Movement of Skills. The CARICOM National can apply in any Member State participating in the CSME;
- (ii) the Free Movement Committee, established by the Competent Authority, will process the application and advise the Competent Authority on whether or not to grant free movement;
- (iii) the Skills Certificate, when issued by another Member State other than the receiving country, ensures a six months definite entry, when presented at point of entry or at the Department of Immigration. The receiving Member State will subsequently verify whether the person indeed belongs to one of the eligible categories. If satisfied that this is the case the person will be granted an indefinite stay as a CARICOM Skilled National.
- (iv) as indicated before, persons can apply directly for free movement in the country where they are planning to seek employment, so they will get an indefinite stay immediately, when they present their Skills Certificate at point of entry or at the Department of Immigration;
- (v) the whole process usually takes two weeks to six weeks

Which CARICOM Nationals are eligible for free movement of skills?

The following ten wage-earning categories are currently eligible for free movement of skills:

- (i) graduates and equivalent qualifications;
- (ii) artistes;
- (iii) musicians;
- (iv) media workers;
- (v) sportspersons;
- (vi) teachers;
- (vii) nurses;
- (viii) holders of associate degrees and equivalent qualifications;
- (ix) artisans, who have received a Caribbean Vocational Qualification (CVQ); and
- (x) household domestics, who have obtained a CVQ or equivalent qualification with effect of 1 January 2010.

Wage-earners, who don't fall into one of these eligible categories currently don't qualify for free movement of skills in the CSME and as such must still obtain a work permit if they want to work in another Member State.

It should be noted that Antigua and Barbuda was granted in July 2006 a derogation on the movement of non-graduate teachers and nurses. Antigua and Barbuda was also granted a derogation on the movement of household domestics in July 2009.

Besides these ten wage-earning categories free movement has also been granted to :

- (xi) all natural and juridical persons, who are a CARICOM National and engaging in any non-wage earning activities of a commercial, industrial, agricultural, professional or artisanal nature;
- (xii) all natural and juridical persons, who are a CARICOM National and creating and managing economic enterprises for the production of / or trade in goods or the provision of services;

- (xiii) all natural and juridical persons, who are a CARICOM National and providing services against remuneration other than wages in any approved sector and in accordance with the approved modes of the supply of a service.

Member States have opened up their markets widely, so with the exception of activities involving governmental authority, which means that these activities are conducted neither on a commercial basis nor in competition with one or more economic enterprises and monopolies, which are deemed that public interest requires exclusion or restriction of right of establishment in a particular sector of an industry, CARICOM Nationals can establish a business or provide a service in any sector of the economy.

The above statement highlights that Article 45 of the Revised Treaty at this point only concerns the free movement of wage earners, since all non-wage earners already have the right to free movement.

- (xiv) managerial, supervisory and technical staff of economic enterprises and / or establishing agencies, branches and subsidiaries of a companies and / or other entities established in the Community

The free movement in the case of managerial, supervisory and technical staff has been granted to the CARICOM National, who is employing these persons. The employer must thus request free movement for his staff as they can't apply, unless they belong to one of the ten eligible categories of wage earners. The request for free movement is a simple procedure, because it just involved the submission of a letter, requesting free movement for the needed managers, supervisors and technical staff together with copies of the data page and employment contract.

Status of and experience with the free movement of skills

The CSME Audit revealed that all Member States have implemented the free movement of the Article 46 categories, namely graduates, artistes, musicians, media workers and

sportspersons. With respect to the legislative enactment of the free movement of teachers, nurses, artisans with a CVQ and holders of Associate Degrees countries are at different stages, but all Member States indicated that in accordance with successive decisions of the Conference eligible CARICOM nationals are facilitated administratively.

The Audit also revealed that artisans are currently limited in the exercise of their right to free movement, because most Member States are currently unable to issue the required Caribbean Vocational Qualification (CVQ) to this category, and as a consequence they can not apply for a Skills Certificate.

Member States indicated during the CSME Audit that their experience with free movement of skills was mainly positive, because it catered for movement of eligible persons in an orderly fashion. All countries furthermore highlighted that no mass inflow of CARICOM Nationals had occurred in their respective territories since the inception of the free movement of skills in their respective territories, because the numbers of persons moving has not been significant so far.

Difficulties with respect to free movement of skills were only experienced in cases where the issuing authority did not fully adhere to the approved free movement of skills regime by granting free movement in error to categories, which were not yet eligible for free movement and in a few incidental cases where supporting documents presented turned out to be fraudulent or not valid (diploma mills).

The number of complaints with respect to the free movement of skills that reached the CSME Unit of the CARICOM Secretariat has dropped significantly, but it is recognised that there is need for continuous training of relevant officials, such as members of the Free Movement Committee and Immigration Officers, to ensure consistency throughout the Region.

Table 1 provides an overview of the data on free movement of skills for 2008 as provided by Member States in November 2008 and updated with end of 2008 data.

Table 1 Free Movement of Skills Data, 2008

COUNTRY	SKILLS CERTIFICATES							
	2008						FROM INCEPTION	
	PERIOD	ISSUED	APPLICAT. REJECTED	VERIFIED	INDEFINITE ENTRY GRANTED	SPOUSES AND DEPENDENTS	ISSUED	VERIFIED
ANTIGUA AND BARBUDA	Jul.-Oct. 08	13	0	11	N.I.	14	13	11
BARBADOS	Jan.-Dec. 08	188	9	113	N.I.	N.I.	455**	256**
BELIZE	Jan-Oct. 08?	56	0	4	N.I.	21	N.I.	N.I.
DOMINICA	Jan-Oct. 08	33	0	3	3	3	101	4
GRENADA	Jan-Oct. 08	37		0	19	0	207	0
GUYANA	Jan-Dec. 08	547	30	0	2	N.I.	2168	0
JAMAICA	Jan-Dec.5, 08	362	1	4	N.I.	37	1392	N.I.
ST. KITTS AND NEVIS	Jan-Dec. 08	44	2	5	N.I.	21	135	5
ST. LUCIA		N.I.	N.I.	N.I.	N.I.	N.I.	N.I.	N.I.
ST. VINCENT AND THE GRENADINES		N.I.	N.I.	N.I.	N.I.	N.I.	N.I.	N.I.
SURINAME	2008	16	1	0	1	0	52	1
TRINIDAD AND TOBAGO	Jan-Nov. 6, 08	251	N.I.	N.I.	N.I.	N.I.	1,685	N.I.

** Issued by the BAC from January 2006 to December 2006.

N.I – No information

Based on figures presented in table I approximately 2300 CARICOM Nationals were issued with a Skills Certificate in 2008 or had their Skills Certificate verified. This means that the actual movement of skills, which occurred in 2008, is much lower since the

figure of 2300 has some double counting of persons, namely those issued with a Skills Certificate that was subsequently verified by another Member State. Furthermore the granting and verification of a Skills Certificate is not an indication that actual movement transpired. The expectation is that the free movement of skills will increase, once the system of Caribbean Vocational Qualifications (CVQs) for artisans is fully implemented in all Member States. So far however the work permit system, which is at the full discretion of Member States, since there is no Treaty obligation to grant a work permit, is outnumbering the free movement of skills.

Review of Schedule for Free Movement of Community Nationals

The Conference agreed at its Eighteenth Inter-Sessional Meeting in February 2007 in Kingstown, St. Vincent and The Grenadines that the free movement of skills should be implemented in accordance with the following schedule :

YEAR	SKILLS LEVEL
2007	Associate degrees and equivalents, such as Professional Qualifications and relevant Technical and Vocational Education Qualifications
2008	CXC 'O' Levels
2009	All CARICOM Nationals

This schedule for full free movement was developed in close consultation with relevant stakeholders, such as the Caribbean Congress of Labour (CCL), the Caribbean Employers' Confederation (CEC) and the Caribbean Association of Industry and Commerce (CAIC).

The free movement of holders of associate degrees or equivalent qualifications was implemented by the end of 2007 in accordance with the decision of the Conference of

Heads of Government in February 2007, even though as indicated earlier a number of countries must still amend their Free Movement of Skilled Nationals Act to cater legislatively for this decision. In July 2008 during its Twenty-Ninth Meeting the Conference of Heads of Government agreed to a review of the schedule for total free movement with a view to determining its reaffirmation or modification. As a consequence of this decision the free movement of persons with CXC O' Levels was not implemented in 2008. At its Thirtieth Meeting the Conference agreed in July 2009 that the schedule of free movement of persons will be reviewed at the CSME Convocation with a view to advising on the timetable for full free movement. No decision has been taken as yet to grant free movement to all CARICOM Nationals.