

Department of Immigration

Department of Immigration Instructions in Respect of a "Same-Sex Partner in a Permanent Relationship with a Bermudian" as at 29th February 2016)

In assessing whether someone is a "same-sex partner in a permanent relationship with a Bermudian" the following guidelines are to be considered prior to issuance of an entry/re-entry letter to the "same-sex partner". The entry/re-entry letter allows the holder to seek employment and be free of immigration control for the time that the holder remains in a same-sex permanent relationship with a Bermudian.

The Department of Immigration requires information to determine whether the "same-sex partner in a permanent relationship" with a Bermudian, is in fact in a relationship that is permanent.

A same-sex partner means a male or female of at least eighteen (18) years of age who has been living with a Bermudian of the same-sex in a relationship akin to a marriage for at least two (2) years prior to the date of application. This is not an absolute guideline and is indicative only. There may be circumstances where the required time period has not been met due to same-sex partners living in different jurisdictions, but are still in permanent relationship. Each case will be determined on its merits.

The following guidance provides factors that the Department of Immigration will consider when assessing whether a relationship is a same-sex relationship that is permanent.

Guidance for demonstrating Permanency of a same-sex relationship

An applicant and their same-sex Bermudian partner will be asked by the Department of Immigration to provide evidence that they are in a permanent relationship.

The Department of Immigration will consider the objective factors set out below when assessing an application for an entry/re-entry letter for a "same-sex partner" of the Bermudian.

The outcome of an assessment may prompt additional scrutiny from the Department of Immigration to identify and evidence a non- permanent relationship (which may include a sham or forced relationship) or, where indicated below, may result in an outright refusal.

The list of factors to consider, set out below, is **not** to be considered as a checklist. Its purpose is to assist and focus consideration of whether an applicant is in a same-sex permanent relationship.

Decisions on whether a relationship is permanent to be considered as a whole, based on all the available evidence, on a case-by-case basis taking account of all the circumstances of the application.

Whether the relationship is "permanent" should be considered upon application. Evidence of permanent co-habitation or evidence of being in a same-sex partnership from a jurisdiction outside of Bermuda can be factors associated with permanency (see list of jurisdictions below); equally, their absence can be too.

The Immigration Board and Minister responsible for Immigration have discretion to grant or refuse an application based on an overall assessment, regardless of whether one or more of the factors below is, or is not, present in the case. Consideration of whether a relationship is permanent is not a checklist or tick-box exercise. In assessing whether a relationship is permanent consideration should be given to the following factors which are not exhaustive.

Factors which may be associated with a same-sex permanent relationship

The same-sex partners are in a current, long-term relationship and are able to provide satisfactory evidence of this by way of affidavits from both same-sex partners explaining the relationship. This must include details of living arrangements and other such pertinent details (such as those that are listed below).

- i. The same-sex partners are co-habiting and are able to provide satisfactory evidence of this e.g. a joint mortgage/tenancy agreement, a joint bank account and/or joint savings, utility bills in both their names.
- ii. The same-sex partners have children (biological, adopted or step-children) and shared responsibility for them.
- iii. The same-sex partners share financial responsibilities (such as information per (ii) above).
- iv. The same-sex partners have visited the other's home country and family and are able to provide evidence of this.
- v. The same-sex partners have made definite plans concerning the practicalities of them living together in Bermuda.
- vi. Confirmation that the same-sex partners are not already in a civil union, civil partnership, marriage or similar relation in Bermuda or in an overseas jurisdiction with another person.
- vii. The same-sex partners have a certificate of civil union, civil partnership, marriage or similar relation from one of the following overseas jurisdictions:
 - (i) Andora
 - (ii) Argentina
 - (iii) Australia
 - (iv) Austria
 - (v) Belgium
 - (vi) Brazil
 - (vii) Canada
 - (viii) Colombia
 - (ix) Croatia
 - (x) Cyprus Czech Republic
 - (xi) Denmark
 - (xii) Ecuador
 - (xiii) Finland
 - (xiv) France
 - (xv) Germany
 - (xvi) Gibraltar
 - (xvii) Greece
 - (xviii) Greenland

- (xix) Guernsey marriage
- (xx) Hungary
- (xxi) Iceland marriage
- (xxii) Ireland
- (xxiii) Isle of Man
- (xxiv) Jersey
- (xxv) Liechtenstein
- (xxvi) Luxembourg
- (xxvii) Malta
- (xxviii) Mexico
- (xxix) Netherlands
- (xxx) New Zealand
- (xxxii) Norway
- (xxxiii) Pitcairn Islands
- (xxxiv) Portugal
- (xxxv) Slovenia
- (xxxvi) South Africa
- (xxxvii) Spain
- (xxxviii) Sweden
- (xxxix) Switzerland
- (xl) United Kingdom
- (xli) United States of America (including the unincorporated territories of Guam, the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands)
- (xlii) Uruguay marriage

(viii). Any other details the Minister responsible for immigrations deems relevant.

If the Immigration Board or Minister responsible for Immigration determines that the relationship of the same-sex partners is permanent, a entry/re-entry letter may be granted in respect of a same-sex partner of a Bermudian. If there is a change in the permanency of the relationship in any way, the same-sex partners must immediately notify the Department of Immigration in writing (see below for further details).

Factors which may be associated with a same-sex relationship which is not permanent

If a case contains one or more of the factors listed below, this may prompt additional scrutiny of the application but will not necessarily result in a negative decision. The Department of Immigration will continue to look at the circumstances of the case as a whole. Even where additional scrutiny has been prompted by any of the following factors, it does not necessarily mean that the relationship is not permanent.

The factors which **may** prompt additional scrutiny of an application include those listed below. Some factors **may** also, where specifically stated, lead to a refusal of an application without additional scrutiny but again, before deciding, the Department of Immigration must continue to look at the circumstances as a whole:

- a. One or both of the same-sex partners makes a public statement that their relationship is a sham. An application can be refused on the basis of such a public statement alone.
- b. One or both of the same-sex partners makes a public statement (not in confidence) that they have been forced into the relationship. An application can be refused on the basis of such a public statement alone.

- c. There is evidence from a reliable third party (e.g. police, social services, registration service) which indicates that the relationship is or may be a sham or forced relationship.
- d. One or both of the same-sex partners does not appear to have the capacity to consent to the relationship, e.g. owing to learning difficulties, and independent evidence, e.g. from a social services assessment.
- e. Failure by one or both same-sex partners to attend an interview, without reasonable explanation, where required to do so to discuss the application or their welfare, or seeking to undermine the ability of the Department of Immigration to arrange an interview, e.g. by unreasonable delaying tactics by one or both of the same-sex partners or a third party.
- f. The same-sex partners are unable to provide accurate personal details about each other (e.g. name, age, nationality, employment, parent's names and place of residence), provide inconsistent evidence, or do not have a shared understanding of the core facts of their relationship, e.g. how and where they met for the first time.
- g. There is evidence of money having been exchanged for the relationship to be contracted.
- h. There is a lack of appropriate contribution to the responsibilities of the relationship, e.g. a lack of shared financial or other domestic responsibilities.
- i. Co-habitation is not maintained (except where one of the same-sex partners is working or studying away from home) or there is no evidence that they have ever co-habited since the commencement of the relationship.
- j. One same-sex partner is a qualified medical practitioner or professional, or has worked as a nurse or caregiver, and the other same-sex partner has a mental or physical impairment which currently requires medical assistance or personal care in their own accommodation.
- k. The same-sex partner has previously had a same-sex partner to come to or remain in Bermuda.
- l. The same-sex partner has previously been sponsored as a same-sex partner to come to or remain in Bermuda (i.e. the same-sex partner has obtained settlement on this basis) and that relationship ended shortly after the same-sex partner obtained settlement. This excludes circumstances where the same-sex partner is a bereaved same-sex partner, or where the same-sex partner obtained settlement on the basis of domestic violence perpetrated by their former same-sex partner.
- m. The past history of one or both same-sex partners contains evidence of a previous sham or forced relationship, or of unlawful residence in Bermuda or elsewhere.
- n. One or both same-sex partners have applied for leave to enter or remain in Bermuda in another category and been refused.
- o. One or both of the same-sex partners are already in a civil union, civil

partnership, marriage or similar relation in Bermuda or in an overseas jurisdiction with another person.

Prohibited degrees of a same-sex partnership

A person cannot be in a permanent same-sex relationship with their grandparent; parent; child; grandchild; sibling; parent's sibling; sibling's child; grandparent's former spouse or civil partner; parent's former spouse or civil partner; spouse's or civil partner's parent; spouse's or civil partner's grandparent; spouse's or civil partner's child; child's former spouse or civil partner; grandchild's former spouse or civil partner; spouse's or civil partner's grandchild.

Entry/re-entry letter for the non-Bermudian same-sex partner of a Bermudian:

Following the Minister responsible for Immigration deciding upon the permanency of a same-sex relationship the Minister may issue an entry/re-entry letter to the non-Bermudian same-sex partner of a Bermudian. However:

- The same-sex non-Bermudian's same-sex Bermudian partner must be ordinarily resident, or be domiciled in Bermuda;
- The same-sex non-Bermudian partner must not contravene any provisions of Part V of the Act;
- There must not be a relevant criminal conviction recorded against the non-Bermudian same-sex partner ;
- The Minister must be satisfied that the non-Bermudian same-sex partner is a person of good character and previous good conduct; and
- The Minister must be satisfied that the same-sex partners remain in a permanent relationship pursuant to the Department of Immigration Instructions in respect of a Same-Sex Partner in a Permanent Relationship with a Bermudian.

Upon granting of the entry/re-entry letter, a non-Bermudian same-sex partner of a Bermudian may be employed in Bermuda without immigration control, provided:

- a. the same-sex non-Bermudian is in a permanent same-sex relationship with a person possessing Bermudian status; and
- b. the same-sex partners are living together; and
- c. the Bermudian same-sex partner is ordinarily resident in Bermuda; and
- d. all conditions outlined above remain fulfilled.