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Background

The Statute Law (*Miscellaneous Amendments*) Bill, 2016 was passed by the National Assembly on 2 March 2017. The Bill as drafted proposed to make key changes to the Kenya Citizenship and Immigration Act, 2011 (No. 12 of 2011) (the **Act**).

Acquiring Citizenship Through Marriage

The Bill proposes that applicants shall be required to have acquired residence status in addition to the current requirement of being married to a Kenyan citizen for a period of at least 7 years.

Permanent Residence

Permanent residency is an immigration status that permits a foreign national to freely live and work in Kenya. However, the risk of loss of this status remains if the immigrant is found to have violated the provisions of the Act or being convicted of a criminal offence for a period longer than 3 years or returned to their country of birth for more than 2 year.

At present an applicant for permanent residence needs to have held work permits for at least 7 years and have been continuously resident in Kenya for 3 years immediately preceding the making of the application. The Bill proposes to allow permanent residence status to also be granted to persons who have only held residence permits for at least 7 years.

In addition, dependants of successful applicants; children and dependants of registered citizens born before their parents acquired citizenship; and widows or widowers of Kenyan citizens are all eligible to apply for permanent residence in Kenya.

Confiscation of Travel Documents

The Bill proposes to remove the current 7 day limit that an immigration officer is permitted to hold a person's travel document to 'a period of time as may be reasonable in the circumstances'. This open ended period is of concern as travel documents could be held for unknown periods.

Appeals of Immigration Decision

The Bill intends to allow under section 41 of the Act for the Cabinet Secretary to hear appeals of decisions of the permits determination committee (the **Committee**). Currently, appeals from the Committee may be lodged before the High Court. The Bill further provides that the Cabinet Secretary's decision can also be further appealed within a period of 90 days.

Interestingly section 57 of the Act provides that any decision under the Act can be appealed to the High Court remains unchanged. The upshot of this is that appeals of immigration decisions could either be taken to the High Court or to the Cabinet Secretary

We will update you again once the Bill is assented to and brought into force.

If you require any further information or clarification on the contents of this note, please contact

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Highlights

- Possible open ended confiscation of travel documents.
- Widening of criteria for permanent residence.
- Widening of criteria for citizenship applications through marriage.



