

REPUBLIC OF NAMIBIA

NATIONAL ASSEMBLY

**REGULARISATION OF STATUS OF
CERTAIN RESIDENTS OF NAMIBIA,
THEIR DESCENDANTS AND
FOREIGN SPOUSES BILL**

(As read a First Time)

(Introduced by the Minister of Home Affairs, Immigration, Safety and Security)

[B. 6 - 2024]

Bill

To provide for a process for application for acquisition of Namibian citizenship by naturalisation for holders of South West Africa identification documents; to provide for a process for application for acquisition of Namibian citizenship by birth or descent of the descendants of holders of South West Africa identification documents; to provide for a process for application for the acquisition of Namibian citizenship by marriage or customary marriage of foreign spouses of holders of South West Africa identification documents; to provide for a prohibition of retroactive right to benefits of persons who acquire citizenship under this Act; and to provide for incidental matters.

(Introduced by the Minister of Home Affairs, Immigration, Safety and Security)

BE IT ENACTED as passed by the Parliament, assented to by the President, of the Republic of Namibia as follows:

ARRANGEMENT OF SECTIONS

1. Definitions
2. Application for Namibian citizenship by holders of South West Africa identification documents
3. Application for Namibian citizenship by descendants of persons eligible to acquire Namibian citizenship
4. Application for Namibian citizenship by foreign spouses of persons eligible to acquire Namibian citizenship
5. No retroactive right to benefits of citizenship
6. Fees not payable
7. Regulations
8. Short title and commencement

Definitions

1. In this Act, unless the context otherwise indicates –

“applicant” means a person who makes an application in terms of section 2(1), 3(1) or (2) or 4(1);

“Chief of Immigration” means the Chief of Immigration appointed in terms of section 3(1)(a) of the Immigration Control Act;

“customary marriage” means a customary marriage as defined in section 1 of the Marriage Act, 2024 (Act No. of 2024);

“date of Independence” means 21 March 1990;

“foreign spouse” means a person, not being a Namibian citizen, who is a party to a marriage or customary marriage with a person eligible to acquire Namibian citizenship in terms of section 2;

“Identification Act” means the Identification Act, 1996 (Act No. 21 of 1996);

“Immigration Control Act” means the Immigration Control Act, 1993 (Act No. 7 of 1993);

“immigration officer” means an immigration officer appointed in terms of section 3(1) (b) of the Immigration Control Act;

“liberation struggle” means the political, diplomatic, military or under-ground struggle waged against colonialism, racism and apartheid which struggle was waged in Namibia and other countries and resulted in the attainment of the independence of Namibia on 21 March 1990;

“marriage” means a marriage as defined in section 1 of the Marriage Act, 2024 (Act No. xx of 2024);

“Minister” means the Minister responsible for home affairs;

“Ministry” means the Ministry responsible for home affairs;

“minor” means a person under the age of 18, in accordance with section 10 of the Child Care and Protection Act, 2015 (Act No. 3 of 2015);

“Namibia” includes the territory of South West Africa during the period prior to independence, including the area of Walvis Bay as defined in section 1 of the Walvis Bay and Off-Shore Islands Act, 1994 (Act No. 1 of 1994);

“Namibian Citizenship Act” means the Namibian Citizenship Act, 1990 (Act No. 14 of 1990);

“oath of allegiance” means the oath of allegiance set out in the First Schedule to the Namibian Citizenship Act;

“population register” means a register compiled and maintained in terms of section 2 of the Identification Act;

“prescribed” means prescribed by regulations made under this Act;

“registrar” means a staff member of the Ministry designated as a registrar in terms of section 3 of the Civil Registration and Identification Act, 2024 (Act No. xx of 2024);

“Registrar-General” means the staff member of the Ministry designated as Registrar-General in terms of section 3 of the Civil Registration and Identification Act, 2024 (Act No. xx of 2024);

“social worker” means a social worker registered or deemed to be registered as a social worker in terms of the Social Work and Psychology Act, 2004 (Act No. 6 of 2004);

“South West Africa identification document” means an identification document issued in terms of the Identity Documents in South West Africa Act, 1970 (Act No. 37 of 1970) or the Identification of Persons Act, 1979 (Act No. 2 of 1979);

“spouse” means a spouse as defined in the Marriage Act, 2024 (Act No. xx of 2024);

“staff member” means a staff member as defined in section 1(1) of the Public Service Act, 1995 (Act No. 13 of 1995);

“traditional authority” means a traditional authority as defined in section 1 of the Traditional Authorities Act, 2000 (Act No. 2 of 2000).

Application for Namibian citizenship by holders of South West Africa identification documents

2. (1) Subject to this Act, a person who –
- (a) is currently ordinarily resident in Namibia;
 - (b) was issued with a valid South West Africa identification document;
 - (c) has been ordinarily resident in Namibia since the date of issue of the South West Africa identification document; and
 - (d) is not already documented as a Namibian citizen;

may apply to the Minister in the prescribed form and manner, within a period five years from the date of commencement of this Act for Namibian citizenship by naturalisation to regularise his or her status and submit such application to a registrar at any office of the Ministry.

(2) The Minister may, by notice in the *Gazette*, extend the period referred to in subsection (1) for a further period not exceeding two years.

(3) A registrar who receives an application referred to in subsection (1) must –

- (a) take the photograph, fingerprints and other biometrics as may be prescribed of the applicant;
- (b) retain the applicant's South West Africa identification document, if available;
- (c) forward the application with the accompanying photograph, fingerprints, other biometrics as may be prescribed and the applicant's South West Africa identification document, if available, to the Registrar-General for verification of the particulars contained in that application.

(4) For the purposes of an application under subsection (1), the Registrar-General may –

- (a) require the applicant or any other person to submit any reasonable information in support of the application; or
 - (b) direct a registrar or any other staff member of the Ministry conduct an investigation on the authenticity of the South West Africa identification document.
- (5) If the Registrar-General is satisfied that –
- (a) the particulars contained in the application are correct; and
 - (b) the South West Africa identification document was issued to the applicant on the date indicated on that South West Africa identification document or in the corresponding records,

the Registrar-General must confirm on the application submitted, that the applicant was indeed issued with a valid South West Africa identification document and forward the application to the Chief of Immigration for further processing.

(6) For the purposes of an application under subsection (1), the Chief of Immigration may –

- (a) require the applicant or any other person to submit any reasonable information in support of the application; or
- (b) direct an immigration officer to conduct any investigation.

(7) If the Chief of Immigration is satisfied that an applicant –

- (a) has been ordinarily resident in Namibia since the date indicated on that South West Africa identification document, not taking into account any temporary absence for study, work, medical treatment, participation in the liberation struggle or other purposes considered to qualify as sufficient for not interrupting ordinary residence by the Chief of Immigration;
- (b) is currently ordinarily resident in Namibia; and
- (c) is not a citizen of any other country,

the Chief of Immigration must make a note of his or her findings in terms of paragraphs (a), (b) and (c) and submit the application and any other information collected and verified to the Executive Director who must submit the application to the Minister for consideration.

(8) For purposes of this subsection (7) –

- (a) temporary residency in South Africa prior to the date of Independence will not be treated as interrupting or negating ordinary residency in Namibia; and
- (b) ordinary residency in Walvis Bay at any time prior to the re-incorporation of Walvis Bay into Namibia will be considered to have been ordinary residency in Namibia.

(9) If, at any time during the consideration of an application submitted in terms of subsection (1), it becomes clear to the Registrar-General, Chief of Immigration or Minister that the applicant meets or may meet the citizenship requirements of another country the Registrar-General, Chief of Immigration or Minister must cause an investigation to be conducted to ascertain that the applicant is not registered as a citizen of such country.

(10) The Minister must consider the application, the information collected and verified by the Registrar-General and Chief of Immigration and accompanying information received in terms of subsection (7) and may –

- (a) grant the application, with or without conditions if he or she is satisfied that the applicant meets the requirements for citizenship set out in subsection (1); or

(b) refuse the application and provide reasons for the refusal.

(11) The Minister may, in terms of subsection (10)(b), refuse an application for citizenship if –

(a) there is proof that the applicant is registered as a citizen of another country; or

(b) granting of citizenship is not in the national interest.

(12) If the Minister determines that an applicant meets the requirements for citizenship of any other country, the Minister may in terms of subsection (10)(a) grant the application on condition that the applicant renounces the citizenship of such other country that he or she holds.

(13) The Minister, after granting citizenship under subsection (10)(a) or (12), must direct –

(a) the Chief of Immigration to make the necessary notation in the relevant citizenship information systems;

(b) the Registrar-General to make the necessary notation in the population register; and

(c) the Executive Director to communicate the decision to the applicant,

provided that the notation in the relevant citizenship information systems precedes the making of a notation in the population register.

(14) If the Minister determines that the applicant does not meet the requirements for the granting of citizenship in terms of subsection (1), he or she must direct the Chief of Immigration to provide appropriate advice to the applicant on the possible solutions to acquire the relevant status to remain in Namibia or to be treated in accordance with the provisions of the Immigration Control Act.

(15) The Minister must, after granting an application for citizenship in terms of subsection (10)(a), cause a certificate of Namibian citizenship in terms of section 16 of the Namibian Citizenship Act to be issued reflecting that the applicant is a Namibian citizen by naturalisation as from the date of issuance.

(16) An applicant must, before he or she is issued a certificate of Namibian citizenship in terms of section 16 of the Namibian Citizenship Act or a Namibian identification document in terms of section 5(1) of the Identification Act, satisfy a registrar or an immigration officer that he or she has –

(a) renounced any other citizenship; and

(b) taken the oath of allegiance.

(17) If an applicant can prove that he or she has made reasonable good faith efforts to renounce any other citizenship that he or she has as contemplated in subsection 16(a), but the renunciation process cannot reasonably be completed or the renunciation is not confirmed by the government of the country in question, the matter must be referred to the Minister who may –

- (a) cancel the granting of citizenship he or she has made; and
- (b) refer the applicant to the Chief of Immigration to advise the applicant as contemplated in subsection (14).

(18) For the purposes of this section, “ordinary residency” and the expression “ordinarily resident” –

- (a) must be considered on a case-by-case basis;
- (b) must be construed to refer to a state of the applicant having made Namibia his or her habitual and ordinary home with a sufficient degree of continuity and permanence,

and the claim for ordinary residency must be established by facts which are capable of objective proof.

Application for Namibian citizenship by descendants of persons eligible to acquire Namibian citizenship

3. (1) A person who made an application for regularisation of his or her status under section 2 may, in the prescribed form and manner, despite any time limit for registration of citizenship by birth or descent under the Namibian Citizenship Act or any other law, at the same time or at any later date submit to a registrar an application for Namibian citizenship by birth or descent for a person born to such a person, who –

- (a) may be a Namibian citizen by birth or descent in terms of the Namibian Constitution but is not already documented as a Namibian citizen in the population register; and
- (b) is a minor at the time of the application.

(2) A person residing outside Namibia may, despite any time limit for registration of citizenship by birth or descent in the Namibian Citizenship Act or any other law, in the prescribed form and manner submit to a registrar an application for Namibian citizenship by birth or descent, to –

- (a) any Namibian diplomatic mission, if there is one;
- (b) any Namibian consular mission or office of a trade representative of the Government of Namibia; or
- (c) such other mission, office or place as may be prescribed,

if that person –

- (i) was born to a person –
 - (aa) who has acquired Namibian citizenship in terms of section 2;
 - (bb) who is now deceased but if still living would have qualified for Namibian citizenship in terms of section 2; or

- (cc) who is still living and qualifies for Namibian citizenship in terms of section 2, but refuses or fails to make an application for Namibian citizenship in terms of that section;
 - (ii) may be a Namibian citizen by birth or descent in terms of the Namibian Constitution and is not already documented as a Namibian citizen in the population register; and
 - (iii) is a major at the time of the application, provided that if the person is a minor, the application may be made on his or her behalf by a parent, legal guardian or social worker.
- (3) A registrar who receives an application under subsection (1) or (2) must –
 - (a) take the photograph, fingerprints and any other prescribed biometrics of the person seeking confirmation of his or her Namibian citizenship; and
 - (b) forward the application with the accompanying photograph, fingerprints and any other prescribed biometrics to the Registrar-General for verification of the particulars contained in the application.
- (4) For the purposes of an application under subsection (1) or (2), the Registrar-General may –
 - (a) require the applicant or any other person to submit any reasonable information in support of the application; or
 - (b) direct a registrar or any other staff member or official to conduct any investigation.
- (5) If the Registrar-General determines that –
 - (a) the particulars contained in the application are correct;
 - (b) the particulars of the birth of the applicant are verified; and
 - (c) a parent of the applicant is a Namibian citizen under this Act or would have been a Namibian citizen under this Act but is deceased or refuses or fails to make an application for Namibian citizenship in terms of this Act,

the Registrar-General must forward the application to the Chief of Immigration for further processing.

(6) The Chief of Immigration must, consider if the applicant meets the requirements referred to in subsection (1)(a) and (b) or (2)(a),(b) and (c), and submit the application and any other information collected to the Executive Director who must submit the application to the Minister for consideration.

(7) The Minister must consider the application, information collected and verified by the Registrar-General and the Chief of Immigration and accompanying information received in terms of subsection (6) and may –

(a) grant the application, with or without conditions if he or she is satisfied that the applicant meets the requirements for citizenship set out in subsection (1); or

(b) refuse the application and provide reasons for the refusal.

(8) The Minister may refuse an application for citizenship in terms of subsection (7)(b), if –

(a) there is proof that the applicant is registered as a citizen of another country; or

(b) granting of citizenship is not in the national interest.

(9) The Minister after granting citizenship in terms of subsection (7)(a), must cause a certificate of Namibian citizenship in terms of section 16 of the Namibian Citizenship Act to be issued reflecting that the applicant is a Namibian citizen by birth or descent as from the date of issuance.

(10) The Chief of Immigration must, if a certificate of Namibian citizenship is issued in terms of subsection (9), cause an appropriate corresponding entry to be made in the relevant citizenship information systems.

(11) The Registrar-General must, if a certificate of Namibian citizenship is issued in terms of subsection (9), cause an appropriate corresponding entry to be made in the population register, by creating a personal profile for the person if none already exists or by updating the relevant entry in the population register.

Application for Namibian citizenship by foreign spouses of persons eligible to acquire Namibian citizenship

4. (1) A foreign spouse in a subsisting or dissolved marriage or customary marriage to a person contemplated in section 2 may, in the prescribed form and manner and within a period of five years from the date of commencement of this Act apply to the Minister, for Namibian citizenship by marriage or customary marriage to regularise his or her status and submit such application to an immigration officer at any office of the Ministry, if –

(a) the marriage or customary marriage was entered into in good faith;

(b) after such marriage or customary marriage he or she has ordinarily resided in Namibia as the spouse of a person contemplated on section 2 for a period not less than 10 years; and

(c) he or she has proof of the existence of the marriage or customary marriage.

(2) The Minister may, by notice in the *Gazette*, extend the period referred to in subsection (1) for a further period not exceeding two years.

(3) The Minister must in respect of a customary marriage prescribe the proof of marriage to be required from a recognised traditional authority.

(4) For purposes of this section, “ordinary residency” and the expression “ordinarily resident”, –

- (a) must be considered on a case-by-case basis;
- (b) must be construed to refer to a state of the applicant having made Namibia his or her habitual and ordinary home with a sufficient degree of continuity and permanence,

and the claim for ordinary residency must be established by facts which are capable of objective proof.

(5) An immigration officer who receives an application in terms of subsection (1) must –

- (a) take the photograph, fingerprints and any other prescribed biometrics of the applicant; and
- (b) forward the application with the accompanying photograph, fingerprints and any other prescribed biometrics to the Chief of Immigration.

(6) For the purposes of an application under subsection (1), the Chief of Immigration may –

- (a) require the applicant or any other person to submit any reasonable information in support of the application as the Chief of Immigration may determine; or
- (b) direct an immigration officer to conduct any investigation.

(7) The Chief of Immigration must –

- (a) consider if the applicant meets the requirements referred to in subsection (1); and
- (b) submit the application and any other information collected to the Executive Director who must submit the application to the Minister for consideration.

(8) If, at any time during the consideration of an application submitted in terms of subsection (1), it becomes clear to the Registrar-General, Chief of Immigration or Minister that the applicant meets or may meet the citizenship requirements of another country, the Registrar-General, Chief of Immigration or Minister must cause an investigation to be conducted to ascertain that the applicant is not registered as a citizen of such country.

(9) The Minister must consider the application, the information collected and verified by the Chief of Immigration and accompanying information received in terms of subsection (1) and may –

- (a) grant the application, with or without conditions, if he or she is satisfied that the applicant meets the requirements for citizenship by marriage or customary marriage set out in subsection (1); or
- (b) refuse the application and provide the applicant with reasons for the refusal.

(10) The Minister may refuse an application for citizenship in terms of subsection (9)(b) if –

- (a) there is proof that the applicant is registered as a citizen of another country; or
- (b) granting of citizenship is not in the national interest.

(11) If the Minister determines that the applicant does not meet the requirements for the granting of citizenship in terms of subsection (1), he or she must direct the Chief of Immigration to provide appropriate advice to the applicant on the possible solutions to acquire the relevant status to remain in Namibia or to be treated in accordance with the provisions of the Immigration Control Act.

(12) The Minister must, after granting citizenship in terms of subsection (9) (a), cause a certificate of Namibian citizenship in terms of section 16 of the Namibian Citizenship Act to be issued reflecting that the applicant is a Namibian citizen by marriage or customary marriage as from the date of issuance.

(13) An applicant must, before he or she is issued a certificate of Namibian citizenship in terms of section 16 of the Namibian Citizenship Act or a Namibian identification document in terms of section 5(1) of the Identification Act, satisfy a registrar or an immigration officer that he or she has –

- (a) renounced any other citizenship; and
- (b) taken the oath of allegiance.

(14) If an applicant can prove that he or she has made reasonable good faith efforts to renounce any other citizenship as contemplated in subsection 13(a), but the renunciation process cannot reasonably be completed or the renunciation is not confirmed by the government of the country in question the matter must be referred to the Minister who may –

- (a) cancel the granting of citizenship he or she has made; and
- (b) refer the applicant to the Chief of Immigration to advise the applicant as contemplated in subsection (10).

(15) The Chief of Immigration must, if a certificate of Namibian citizenship is issued in terms of subsection (12), cause an appropriate corresponding entry to be made in the relevant citizenship information systems.

(16) The Registrar-General must, if a certificate of Namibian citizenship is issued in terms of subsection (12), cause an appropriate corresponding entry to be made in the population register, by creating a personal profile for the person if none already exists or by updating the relevant entry in the population register.

(17) Despite subsection (1) an applicant who, at any time before entering into the marriage or customary marriage or during the marriage or customary marriage, is –

- (a) enjoying diplomatic immunity in Namibia under any law relating to diplomatic privileges; or

- (b) a career representative of another country; or
- (c) a member of any police, military or security unit whether or not he or she was seconded for service within Namibia by the Government of another country; or
- (d) an illegal immigrant; or
- (e) serving in the armed or security forces of any foreign country while that country was at war with Namibia,

does not qualify to be granted citizenship under this Act.

No retroactive right to benefits of citizenship

5. (1) Nothing in this Act may be construed as giving a person who receives a certificate of Namibian citizenship in terms of this Act any retroactive entitlement to social benefits or any other benefits which are available only to Namibian citizens.

(2) A person who is issued with a certificate of Namibian citizenship in terms of this Act is only entitled to the rights and benefits of citizenship, other than those explicitly covered by this Act, from the date of issue of such certificate of Namibian citizenship.

Fees not payable

6. No fees are payable for an application made in terms of this Act or for the first issuance of a certificate of Namibian citizenship in terms of section 16 of the Namibian Citizenship Act made in terms of this Act.

Regulations

- 7.** The Minister may make regulations relating to –
- (a) the form and manner in which an application in terms of this Act must be made; or
 - (b) any matter which in terms of this Act is required or permitted to be prescribed by regulation.

Short title and commencement

8. (1) This Act is called the Regularisation of Status of Certain Residents of Namibia, their Descendants and Foreign Spouses Act, 2024, and comes into operation on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.
