**NATIONAL ASSEMBLY**

**QUESTION FOR WRITTEN REPLY**

**QUESTION NO. 2154**

**DATE OF PUBLICATION: FRIDAY 3 JUNE 2022**

**INTERNAL QUESTION PAPER 22 – 2022**

**2154.MR M G E HENDRICKS (AL JAMAH-AH) to ask the Minister of Home Affairs:**

 Whether, in order to address the total number of undocumented workers in service of employment throughout the Republic, he will consider that (a) companies invest in a fingerprinting machine to take the fingerprints of undocumented workers upon hiring them, (b) the specified fingerprints be sent to his department to have them documented, (c) there should be a Special Fund for employers to contribute towards for the hiring of foreigners, (d) the specified method will lead to proper statistics on the number of foreigners in employment in the Republic and (e) once such foreigners have been documented, they can receive a pass and become taxpayers too; if not, why not, in each case; if so, what are the relevant details in each case? NW2559E

 **REPLY:**

1. The Department would not be in support of such a requirement as the law as it is currently stated does not allow for the employment of undocumented foreign nationals. Section 49 (3) of the Immigration Act , 2002, states as follows:

*“Anyone who knowingly employs an illegal foreigner of a foreigner in violation of this Act, shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding one year: Provided that such person’s second conviction of such an offence shall be punishable by imprisonment not exceeding two years or a fine, and the third or subsequent convictions of such offences by imprisonment not exceeding five years without the option of a fine.’*

The department therefore takes strong action against any employer hiring undocumented foreign nationals and would not advocate that they do so even if they took their fingerprints.

(b) The department does not document individuals who are undocumented as the Immigration Act, 2002 is very specific about the processes to be followed in the employment of foreign nationals whilst those individuals who are under the Refugee Act, 1998 have specific provisions that allow them to work whilst awaiting the outcome of their refugee status determination applications.

In cases where the Minister exercises discretionary powers under section 31 of the Immigration Act, 2002, (Exemptions), where he/she grants the rights of permanent residence for a specified period this would require extensive consultation and approval at a Cabinet level. A full and detailed case for such special circumstances would be required as was done in the dispensations for Lesotho and Zimbabwean nationals that occurred during the last 12 years.

Regarding parts C, and E the department is not supportive of the recommendation as the department is guided by the legislation it is mandated to apply. With regards to D, the department conducts law enforcement inspections which provides statistics on the number of undocumented persons detected and also alerts employers of the penalties that will arise from employing undocumented persons.

**END**