

Asiel en Migratie Engels

Questions and Answers on Asylum

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1.1 ASYLUM POLICY

1.1.1 Who does the return policy apply to?

The return policy applies to:

- persons with a temporary residence permit that has expired or been withdrawn
- persons residing illegally in the Netherlands
- failed asylum seekers

More than 70% of asylum applications, once investigated, turn out to be unfounded. Around 35% of applications for a residence permit are rejected. More than 100,000 people are estimated to be residing in the Netherlands illegally, without access to public services. Most of them live in the big cities. It is difficult to reconcile the organisation and administration of a state governed by the rule of law with the presence of a large group of people residing there illegally. Illegal immigrants are also economically weak and socially vulnerable, which can lead them to commit crime. So illegal immigration is a political, administrative, and social issue.

Finally, sovereign states are obliged by international law to readmit their own citizens, and this obligation is recognised by the countries from which the Netherlands receives illegal immigrants. However, their identity and nationality have first to be established. Since 80% of asylum seekers enter the Netherlands with no identity documents, their return is sometimes difficult to arrange.

1.1.2 What are the core principles of Dutch asylum policy?

The first principle is that anyone may apply for asylum in the Netherlands. An application's success depends on whether the applicant needs to be protected against the authorities in their country of origin. If so, they will be given a residence permit and a place at a reception centre. If not, they can go back to their country of origin without fear of danger.

An asylum seeker may appeal against a decision by the immigration authorities in a court of law, which examines the decision. If the court of final instance decides that the asylum seeker does not need to be protected in the Netherlands, their application has failed.

1.1.3 What is in the Policy Document on Return, presented by the Minister for Immigration and Integration on 21 November 2003?

Return is now regarded as an important part of immigration policy. From the moment that asylum seekers and illegal immigrants enter the Netherlands,

everything is done to ensure that those who fail to obtain a residence permit go back to their country of origin, if necessary against their will.

The basic purpose of the Policy Document on Return is to return more illegal aliens to their countries of origin by applying existing measures more effectively, introducing new policy, and combining national and international policy.

The principle is that anyone who wants to go back to their country of origin will be given the chance to do so. The aliens themselves are primarily responsible for their return. The state facilitates it (see question 8).

If aliens fail to leave the Netherlands independently, the state may use its power to force them to leave.

1.1.4 How has the policy on expulsion changed?

To begin with, the legislation has not changed.

What has changed is that existing policy is being carried out effectively. The departure centres are new.

The government has made an extra effort to ensure the return of the 26,000 asylum seekers who came to the Netherlands under the old Aliens Act, which was in force until March 2001. Once having exhausted all domestic remedies, they will receive intensive individual guidance to prepare for their return to their countries of origin. The guidance will be given in two eight-week blocks, the last one at a departure centre.

1.1.5 What is the ‘amnesty’?

The Minister for Immigration and Integration may grant a residence permit under a special amnesty. In order to qualify, applicants must meet five conditions:

- he must have submitted an initial asylum application in the Netherlands before 27 May 1998;
- he must have been awaiting a final decision on his initial application on 27 May 2003;
- he must have been in the Netherlands continually from the date on which he submitted his initial asylum application to 27 May 2003;
- the residence permit will not be granted if counter-indications exist (e.g. the applicant is a threat to public order or national security, the applicant has provided false information or withheld information, doubts exist about the applicant’s identity);

- the residence permit will be granted only if the applicant drops any legal action concerning his residence status.

1.1.6 Who is eligible for the amnesty?

More than 2,300 aliens will receive a residence permit arising from the amnesty and the special ministerial exception or other discretionary powers of the Minister for Immigration and Integration. They are asylum seekers who have been in the Netherlands for longer than five years and still have not received a final decision on their initial asylum application.

They can be subdivided as follows:

- 2,097 have received notice that they are eligible for a residence permit under the amnesty. They meet the objectively verifiable criteria.
- In addition, between 14 January 2003 and 1 October 2003, the Ministry of Justice received 9,800 letters requesting a residence permit on humanitarian grounds. Most of the letters came from aliens engaged in legal action, illegal immigrants, and failed asylum seekers. In the case of 220 of these, an examination of their files led to a residence permit being granted via the exercise of a special ministerial exception or other discretionary ministerial powers.
- It has been decided to grant asylum to the “Stari Most list” (17 asylum seekers from Srebrenica).

1.1.7 What happens during the asylum procedure?

Any alien who applies for asylum in the Netherlands will hear within 48 hours of submitting their application whether it is to be investigated or is considered hopeless. In the latter case, asylum seekers have to leave the Netherlands immediately. Those whose cases are to be investigated are transferred to a reception or investigation centre run by the Central Reception Organisation for Asylum Seekers.

If the Immigration and Naturalisation Service intends to reject the asylum application, the asylum seeker is informed. He may respond and explain why he disagrees. In making its eventual decision, the IND has to take the asylum seeker’s response into account.

If the IND rejects an application, the asylum seeker may apply to the district court for review of this decision. If this is unsuccessful, the asylum seeker will have to leave the Netherlands. He may appeal to the Council of State, but he may not await the outcome of the appeal proceedings in the Netherlands.

Asylum seekers who may remain in the Netherlands during the procedure are transferred to an asylum seekers' centre to await the final decision. There they attend courses in Dutch and social orientation.

If the final decision is positive, the asylum seeker will receive a temporary residence permit. He will also be eligible for housing. Once an alien has resided legally in the Netherlands for five years or longer, he may apply for a permanent residence permit or for naturalisation.

If the final decision is negative, the asylum seeker will have to leave the Netherlands.

1.1.8 What types of reception are there?

The reception centres of the Central Reception Organisation for Asylum Seekers are to be split into two types for two categories of asylum seeker. This will strengthen the message that not being admitted means having to go back.

There will be accommodation centres and pre-return centres. The accommodation centres will house asylum seekers still awaiting a decision by the IND. The pre-return centres will house asylum seekers whose applications have been rejected by the IND, but who are still entitled to reception, for instance because they have applied for a review of this decision.

Creating two types of centre distinguishes clearly between aliens still awaiting a decision on their application and those who have been rejected. There is a difference in the facilities on offer depending on the stage that the asylum procedure has reached: some facilities are focused on long-term residence in the Netherlands and others are focused on a return to the country of origin.

As well as accommodation and pre-return centres, there will be departure and expulsion centres. An expulsion centre is a type of detention centre for failed asylum seekers and illegal immigrants who may be removed at short notice. Departure centres are intended for the 26,000 asylum seekers who have not yet left since the first period of intensive guidance in preparation for their return. They are transferred from their COA reception centre to a departure centre, where they prepare for their departure for a further eight weeks. The point of all of this is to avoid people ending up on the streets as illegal immigrants.

A departure centre cannot be compared to an expulsion centre. Departure centres in no way resemble detention centres.

1.1.9 What is the government doing to ensure the return of failed asylum seekers?

The Dutch parliament has agreed to plans to step up measures over a three-year period to ensure that the 26,000 asylum seekers who applied for asylum under the old Aliens Act (before April 2001) go back to their country of origin if their applications fail. Three thousand failed asylum seekers will go first. The rest are still engaged in the asylum procedure, waiting to hear whether or not they can stay.

If they cannot stay, a team of immigration experts will spend eight weeks preparing them for their return. If they want to go back to their country of origin, the Dutch state can help them make a new start there by paying for their flight and giving them money for the first few months. If they still fail to go back, they will be transferred to a departure centre, where they will receive intensive individual guidance for another eight weeks to prepare them for their return.

If during these two eight-week periods an applicant can prove that he cannot go back, he will receive a residence permit. Those who can go back but still refuse to do so will be detained as illegal aliens. The success of the return policy ultimately depends on the cooperation of applicants. Failed asylum seekers who continue to refuse to return after the two periods of preparation and who for one reason or another cannot be expelled, will eventually end up on the street as illegal immigrants. Not because this is what the state wants, but because they choose not to go back to their country of origin.

The Netherlands will always welcome genuine refugees and offer them protection. The Netherlands is not an intolerant country, but it wants to ensure that failed asylum seekers who can go back really do so rather than winding up as illegal immigrants on Dutch streets. A just asylum policy needs an effective policy of return.

1.1.10 Does the Netherlands send failed asylum seekers back to unsafe countries?

The answer is simple: no. The Netherlands does not send failed asylum seekers back to unsafe countries. To do so would contravene Article 3 of the European Convention on Human.

1.1.11 Does the Netherlands also send solitary underage asylum seekers back?

The Netherlands sends failed solitary underage asylum seekers back to their country of origin only if it has the assurance that they will be looked after there, either by relatives or in a reception centre.

The Netherlands is willing to contribute to their reception in their countries of origin. It has already set up and paid for a pilot reception centre for failed solitary underage asylum seekers in Angola.

1.1.12 How does the policy of return fit in with developments in the EU?

The Tampere European Council (October 1999) declared itself in favour of a common asylum and migration policy, with four crucial elements:

1. partnership with countries of origin;
2. a Common European Asylum System;
3. fair treatment of third country nationals;
4. management of migration flows.

As to the last item, EU member states are signing readmission agreements. Standard readmission clauses are also being included in other agreements between the EU and third countries (or groups of third countries). A common asylum and migration policy will be developed further during the Dutch EU presidency in 2004.