

Summary

Religious and ideological organisations ask the Dutch government to admit migrants to the Netherlands for religious purposes. It is the task of the Dutch government, more in particular the Secretary¹ for Immigration and Integration Affairs, to regulate the admission of migrants in general. It has become clear that, ever since the *Vreemdelingenwet 2000* (Vw2000) (Aliens Act) came into force, there has been a mismatch between the wishes of these religious and ideological organisations and the migrants they wish to sponsor, the task of the government and the applicable rules. At present it is not quite clear how, before the Vw2000 came into force, the Dutch authorities dealt with requests of religious organisations and the like to admit persons to the Netherlands. The Vw2000 does not provide any rules on this issue, which makes it difficult to formulate a clear and consistent new policy. The research presented in this report was done in order to cover this gap.

This research describes what, prior to the coming into force of the Vw2000, are to be regarded as religious or ideological purposes for which residence in the Netherlands was granted, for what reasons exactly requests were made and on what grounds these requests were either granted or denied. Attention was paid to the residential circumstances of the admitted persons and their activities for the organisations concerned. Also, it was determined how the religious or ideological organisations would have functioned without the help of their foreign guests. For this research almost 140 religious and ideological groups and communities of almost all religious groups in the Netherlands have been approached in the period of January to April 2004. This has resulted in 18 extensive reports of semi-structural interviews with enclosures; accounts of telephone conversations with all organisations approached; 161 personal files containing data on applicants and their organisation, on the application of an entry clearance visa or a residence permit, and on the applicants' arrival and departure, the activities to be performed and their employment relationship and life support. The report is largely based on this material.

The history of religious groups in the Netherlands is characterised by constant changes: the arrival of new groups and churches and schisms of existing groups and churches. The Netherlands have developed from a mono-cultural to a multi-form society, and the same goes for religious groups in the Netherlands. The separation of church and state was reinforced when the constitution was revised in 1983. Freedom of religion or philosophy of life is embodied in article 6 of the Constitution and has international legal equivalents in the ECRM and the International Convention on Civil and Political Rights. The interpretation of the freedom of organisation and of the legal status of religious communities in specialist literature shows that the right to appoint clergymen autonomously is an essential part of the separation of church and state. The question is, what is the relation between the Dutch admission policy for religious people and the freedom of religion and philosophy of life and the separation of church and state.

Since the Vw2000 came into force, it is only possible to grant residence permits under the restriction of "studie" (study), "arbeid als geestelijke voorgangers" (working as clerical minister) or "conform beschikking van de minister" (in accordance with the secretary's ruling). In many cases, the immigrant first has to apply for an entry clearance visa in his country of origin. The Immigration and Naturalisation Department (IND), resorting under the secretary, tends to strictly enforce the rules on entry clearance visas in respect of imams. The rationale behind this is that the IND prefers to be able to judge in advance the possible danger to

¹ In order to prevent misunderstanding with clerical ministers, we will refer to the *Minister voor Vreemdelingenzaken en Integratie* with the English word Secretary.

public society caused by admitting these immigrants. However, case law shows that judges have not been convinced by the IND's argument that the threat posed to the Dutch society might be a reason to deny an entry clearance visa to a minister. After entering the Netherlands with the entry clearance visa, the migrant will need a residence permit. Before May 1st 2004 requests for such permits had to be filed with the local immigration police.

Between 1954 and 1995 religious people needed no work permit. Where religious teachers and some ministers were concerned, as of 1980 it was assumed that a working relation existed and a work permit was necessary. Under the Act on the Employment of Foreigners of 1995 (*Wet arbeid vreemdelingen*), all 'employers' of immigrants coming to the Netherlands for religious activities needed to have a work permit. It is not quite clear why this requirement was introduced; this issue does not seem to have been given much consideration. In 2000 several members of the *Tweede Kamer* (one of the houses of Parliament) argued that the Act on the Employment of Foreigners should not apply to immigrants for religious purposes. During this research it has become clear that the authorities responsible for the work permits (the Central organisation for Work and Income, CWI), apart from the general guidelines, use their own guidelines when judging applications for work permits for religious 'workers', as the general guidelines do not always fit the facts of these cases. Common practice and case law on the Act on the Employment of Foreigners show that before April 1, 2001 few applications for working permits were refused.

A survey of the admission policy in the 14 other EC members shows that in 7 member states religious people are exempted of the work permit obligation if they only work for their religious organisation. Some countries have enacted specific rules for the admission of religious people. The United Kingdom has the most elaborate regulation regarding admission in this context.

The researchers came upon a much wider range of organisations and groups that request admission of immigrants for religious purposes than expected, based on the initial order. The research shows that Catholic dioceses, Protestant organisations, migrant churches, Jewish communities, as well as Hindu, Buddhist and Muslim organisations request the admission of immigrants for religious activities with their organisations. This involves a wide range of persons (members of monastic orders and congregations, volunteers, ministers, monks, lamas, students, teachers), a wide range of domestic circumstances (in monasteries, parishes, communities and independent living accommodation) and a wide range of activities (prayer, lead in prayer, management, domestic work, education). All organisations, however, have one thing in common: the activities to be carried out form part of the organisation and of the philosophy of life and relate to both the preservation of the organisation as the realisation of the religious or philosophical goals of the organisation. The immigrants endorse the religious or philosophical views of the organisation in which they are involved. The tasks that need to be carried out in each religious organisation can be divided in three areas: leading in prayer and contemplation by ministers in (for instance) monastic communities; training and educating religious specialists; and managing religious organisations. It is difficult to classify people, domestic circumstances and activities as there is an overlap in all categories, mainly for activities. A person in a monastery can be occupied with prayer, management and domestic duties all at the same time. A minister not only leads in prayer, but also has parish duties, which may include giving social support to members of the church. There have not been applications for the admission of immigrants just for work that could also be done by laymen.

When looking at the practice of admission, a distinction is to be made to the situation prior to Vw2000 and after Vw2000. Prior to Vw2000 applications were almost always granted. Some organisations had their own arrangements with the Department of Justice on the subject. The other organisations had good contacts with local immigration police officials. Positive decisions on the applica-

tions were not motivated, but practice shows that staying with a religious organisation that vouched for the immigrant and confirmed this in writing, was enough grounds for granting a residence permit. Immigrants were granted a restricted residence permit. These restrictions could differ and could range from "religious groups", to "paid employment" or "working as religious teacher" or "fellowship", "teaching practice", "study". The same person might have different consecutive restrictions for the same purpose during lengthened stay: the restriction of the residence permit was sometimes changed by the IND or a local immigration police official, without any change to the daily activities of the immigrant. Also, different persons staying at the same organisation could have different restrictions. The permit carried a specification that named the organisation concerned and a labour market restriction that could differ as well, often amplified by the wording "beroep op publieke middelen kan gevolgen hebben voor het verblijfsrecht" (a claim to public financial assistance may endanger the right to stay). No direct connection seems to have existed between the immigrant's activities and the restriction. The religious sisters can serve as an example: the researchers found all the restrictions mentioned above were applied to them at some point in time.

After the Vw2000 came into force, obtaining a residence permit for religious purposes became a lot more difficult. Applications were taken into consideration, but not decided upon, applications were denied and some were granted. Mainly, applications were denied because there was no work permit or labour contract. Decisions granting a residence permit were (again) not motivated. The granted permit is called "verblijfsvergunning regulier bepaalde tijd" (regular temporary residence permit). It is no longer possible to grant permits for an indefinite period of time to persons that have been admitted for a temporary goal. Before Vw2000 this was possible. The number of restrictions are now "paid employment", "restriction or ruling by Home Secretary" and "study".

The original residence goal, as stated on the application for an entry clearance visa or residence permit, often results from the legal possibilities (the codes and boxes on the forms and in computer programmes of the IND and immigrant registration offices). As a result, the box ticked does not adequately reflect the intended activities. To give an example, the residence goal "study" may mean that the religious and spiritual education also involves domestic work within the organisation. The researchers found that the residence goal "religious purposes" was never used improperly by the applying organisations. The researchers did not find any cases where the immigrant performed other activities than those he was admitted for. The local immigration police officers that were visited had the same impression.

All applying organisations, regardless of religious or ideological background, agree that the work of religious people cannot be qualified as a "normal" employment. Also, in terms of labour law, it is not assumed that a labour agreement with the applying organisation exists for the activities carried out by admitted persons. Admitted persons sometimes receive an allowance, sometimes they do not and sometimes only a small one. These allowances are only meant to provide for the cost of living. The activities carried out by the immigrants are not a goal in itself, but originate from the religious or ideological goal. The immigrant's goal in coming to the Netherlands is not to earn an income. Instead of an employment relationship, there is a different, religious relation to the organisation: one has joined the organisation as a member, one is ordained, called upon or one is a volunteer, or one has taken vows of poverty.

All organisations receive income, mainly from donations. Members of religious societies are expected to contribute financially to the organisation. In Catholic churches, for instance, there is a weekly collection. An organisation such as MERU/MVU receives sponsor donations from all over the world. All these forms of income support the organisation financially. For some organisations these means are used to support the immigrants staying with them. At other organisations the immigrants support themselves, by donations or sponsor donations re-

ceived as individuals. The organisations state they never appealed to public means or funds. The researchers did not come across any case where the authorities had to use the guarantee issued.

Many organisations have experienced serious problems since Vw2000. Firstly, the centralisation of the responsibilities of local immigration police offices to the IND has led to many delays and arbitrary decisions (some organisations have still been granted permits, others have difficulties and some have not received any permits at all). Secondly, the organisations state they cannot function or function badly without the immigrants. Some are contemplating moving their activities, which have been performed in the Netherlands for decades, abroad. In the absence of a specific restriction for these religious activities in the Vw2000 and the consecutive regulations, the people concerned are compelled to act as labour migrants although they are no factual employees.

As to the former act, the researchers did not come across any disputes with the organisations that were examined or with the immigration police officers. Of course it is possible that disputes existed at organisations that were not visited, or that organisations that had little chance of obtaining a permit refrained from applying, following the advice of immigration police officers. Case law described in chapter 3 does show there were disputes on the admission of imams. The arguments made by the government in these cases (protecting society, the risk of appealing to public funds, availability of national workers) could hardly ever convince the courts. Leaving aside these few legal procedures, the general picture is that under the former Act no discussion existed about an essential Dutch interest being served by the coming of immigrants to religious organisations.

The description of the application procedure shows that organisations had no real trouble in obtaining residence permits. Their less formal application (e.g. a letter of invitation) was turned into a formal ground for residence by the authorities, after which a permit including a restriction was granted. This restriction was of no real interest to the organisation. The fact that the restriction changed was hardly noticed. Changing the restriction has no important reason and appears to have been a bureaucratic matter. Regarding the awarded labour market restriction, the research shows that the authorities followed no clear-cut policy, but this was not an issue for the applicant. Positive decisions were not motivated. Common practice shows, however, that residence with religious or ideological organisations that had a good reputation with the authorities was facilitated and therefore it is apparent that the authorities assumed a Dutch interest in these cases. The organisations had no problems with obtaining permits before Vw2000.

During the research a number of bottlenecks were noticed concerning the present practice of admitting immigrants for religious purposes. The first problem is the disappearance of the counter service of the immigration police offices, with whom the organisations had established a relationship of trust. The extensions of residence permits and since May 1st also first applications have been dealt with by the IND, to whom all paper work must be sent by mail. The second problem is the fact that the government cancelled the individual agreements made with some of the religious organisations in the 1980ties. This put an end to "tailor-made" agreements with individual organisations. These two problems created a third one, namely the fact that organisations are not familiar with IND civil servants and vice versa. The organisations no longer have a contact person at the government that they are familiar with and vice versa.

The description of the admission practice shows that literally one box is missing on the application forms: the restriction "religious purposes" has disappeared. Both IND, registration offices and applying organisations have to look for other restrictions, such as "paid employment" and "study". However, the applications do not seem to fit. This bottleneck was temporarily solved by the temporary measures (TBV 2004/2 of January 13, 2004) for the organisations mentioned in it. The absence of the right box resulted in longer reviewing periods of applica-

tions or a complete standstill. Finally, the applications that use “paid employment” do not always regard a situation where there was actual paid employment. This forces organisations to meet the demands of the Act on the Employment of Foreigners. Where this failed, organisations got involved in lawsuits or stopped applying for permits. Although the researchers noticed from consulted authorities that there was no consistency in awarding labour-market restrictions on residence permits, this was not reported as a problem by the religious organisations.

The organisations feel threatened in their existence by the consequences and bottlenecks of the Vw2000. Some expect they will disappear from the Netherlands completely, others will no longer be able to realise (part of) their religious goals without their foreign guests. The organisations state three elements that prove their importance to Dutch society: a society cannot do without religious life, spirituality and meaning, care for vulnerable groups in society and upholding its cultural and religious heritage. The organisations try to turn the tide by lobbying, using legal counsel, instituting legal procedures or by bypassing obstacles.

For the sake of future policy, the number and variety of organisations is much larger than expected. Almost all religious groups in the Netherlands have a need for immigrants for religious purposes. This involves both religious people who stay within an organisation and work there (such as monasteries or voluntary communities), students at religious training, as well as ministers of practically all religious denominations.

The researchers recommend:

1. that a restriction “verblijf bij religieuze of levensbeschouwelijke organisatie” (residence with religious or ideological organisation) be added to the list of grounds for admission;
2. that persons admitted on this restriction need no working permit on the grounds of the Act on the Employment of Foreigners;
3. that the government should consult the organisations concerned so as to develop guidelines describing the terms of admission for specific religious activities;
4. including conditions for ministers relating to the level of education or consecration according to the religious organisations’ criteria, if the admission of ministers is reviewed outside the frame of the Act on the Employment of Foreigners;
5. that a guarantee be required from the applying religious and ideological organisations;
6. that migrants that are admitted to stay with religious organisations may obtain indefinite residence or naturalisation in due time;
7. giving the government a “human” face by installing contact persons at a local level.