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Selectief naast restrictief. Evaluatie van de Wet modern migratiebeleid

Summary

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Summary

The *Wet Modern Migratiebeleid* (Modern Migration Policy Act) came into force on 1 June 2013. The aim of this Act was to modernise the regular admissions policy on migrants from outside the European Union, referred to as third-country nationals. Regular migration constitutes all forms of long-term migration except for asylum. The regular admissions policy is divided into various purposes of residence such as work, study or family reunification. The Modern Migration Policy Act is not related to asylum migration. With the Act, the legislature intended to create a fast, efficient and controllable migration system which is welcoming to the migrants who are needed by the Netherlands and restrictive to other (regular) migrants. The Modern Migration Policy Act requires that it is evaluated five years after the Act came into force. This report fulfils the requirements of this statutory obligation.

The Modern Migration Policy Act

As a result of the Modern Migration Policy Act, changes were made in three areas of the regular admissions policy: (1) it was accelerated and simplified by combining what used to be two separate procedures to apply for a provisional residence permit (MVV) and the residence permit into one procedure: now known as the procedure for admission and residence (TEV); (2) a sponsor system was introduced in which the role of the sponsor was enlarged at the application stage and throughout the period of residence of the foreign national; and (3) a new system of monitoring and supervision was introduced based on trust in advance and retrospective monitoring. With the introduction of the sponsor system, a distinction was made between an authorised sponsor and a sponsor who is not authorised. A sponsor can be a company, educational institution or natural person. Only an authorised sponsor has access to the accelerated procedure. In principle, applications submitted by an authorised sponsor are only checked by the sponsor of the foreign national to ensure the requirements have been met. These applications are dealt with by the IND on the basis of the sponsor's own statement. An application for which the purpose of residence is highly skilled work, research, study and au pair, may only be submitted by an authorised sponsor.

To qualify as an authorised sponsor a number of conditions must be satisfied in relation to the continuity, solvency and soundness of the company or institution. It is not possible for a natural person to be an authorised sponsor.

Aim of the evaluation of the Modern Migration Policy Act

The aim of the evaluation of the Act is to gain quantitative and qualitative insights in three areas: the acceleration and simplification of the admissions procedures, the sponsor system and finally, the system of monitoring and enforcement.

Structure of research

In order to evaluate the Act, six purposes of residence were selected for the report: highly skilled work, paid employment, research, study, au pair and family. When making this selection, the type of sponsor that is allowed to submit an application for the purpose of residence was considered, as well as the number of applications submitted. The research is structured in three sections. First, a preliminary study of the objectives of the legislature via the Modern Migration Policy Act, and the changes that were introduced as a result of the Act. Second, an analysis of quantitative data of the IND in relation to the number of applications, distinguishing features of the foreign nationals, processing time of the applications, and decisions on applications. Third, a qualitative study (via interviews) of the experiences with the Modern Migration Policy Act of both sponsors and the lawyers representing those sponsors, as well as the IND. The period covered by the research is from the introduction of the Act on 1 June 2013 to the end of 2017. The interviews were held from July 2018 to January 2019 and these also dealt with developments that occurred after 31 December 2017.

Findings

The first distinctive change resulting from the Modern Migration Policy Act was the creation of a fast and simple procedure for all regular migrants. Combining the MVV procedure with that of the residence permit is one of the most important elements of this simplification. This TEV procedure generally receives a positive to highly positive evaluation from all respondents from both the IND and the sponsors and lawyers.

The speed of the procedure is related to the target term and statutory decision period for dealing with an application. Quantitative data shows that for purposes of residence for which the application can only be submitted by an authorised sponsor, the statutory decision period, varying between 60-90 days, is almost always achieved. The target term of two weeks is achieved on average in over 70-90% of the applications. Applications for which the purpose of residence is



study are processed fastest on average. The experiences of sponsors and lawyers are positive in relation to the speed of the procedure. The most important delaying factor concerning a decision by the IND on an application is the busy period in the summer months. The entire process of the application for a residence permit to the time the permit is issued in the Netherlands can also be delayed, for example, by the scheduling of appointments to collect the MVV and collect the residence document in the Netherlands. This is particularly true for students and researchers who generally come to the Netherlands in the busy summer months. The target term of two weeks does not apply to foreign nationals who come to the Netherlands for paid employment or for family. The statutory term of 90 days for applications for paid employment is achieved in over 90% of the cases. In the case of the residence purpose of family, the duration for processing TEV applications started to rise during this study. In 2013 94% of the TEV applications were processed within the statutory term. In 2017 this was 71%.

Numerically, in relation to the number of applications, the three most important purposes of residence are family, study and highly skilled work. Practically all applications that were submitted by authorised sponsors are granted. Highly skilled work, research and study are qualified by the legislature as forms of migration that the Netherlands requires. In particular the figures on the level of migrants coming with highly skilled work and study as the purpose of residence, showed an increase throughout the period studied. For migrants with research, au pair and paid employment as the purpose of residence, the number of applications and requests granted was relatively limited, from over 2.000 to less than 1.000 a year. The figures on the number of admitted migrants with family as the purpose of residence showed an increase throughout the entire period of the study.

The second important change to the regular admissions policy arising from the Modern Migration Policy Act was the introduction of the sponsor system, where the sponsor is given an important role concerning the admission and residence of the foreign national. In the case of purposes of residence for which an application can only be submitted by an authorised sponsor, this role is larger than the role for sponsors who are not authorised. All sponsors can submit a residence application for the foreign national and if the application is rejected, they can raise an objection against the decision or lodge an appeal if necessary. The obligations for the sponsor differ depending on the purpose of residence and are divided into an obligation to provide information to the IND, an obligation to keep records and an obligation to care for the foreign national.

There are four categories of authorised sponsor: work, research, study and exchange. Since the coming into force of the Modern Migration Policy Act until the end of the period of this study, 4.681 applications for recognition as a sponsor for the work category have been submitted. For the research category, this number is 72, for study it is 34 and for exchange 40. Based on the experiences of the IND, it can be concluded that in relation to recognition for the work and research category, many companies and institutions who have been authorised as sponsors, do not make use of this status to submit residence applications.

The sponsor system works well in the case of large companies. This applies to both the recognition procedure and to the obligations that companies have as sponsors. In the case of small and start-up companies, the procedure to become authorised can be difficult. In the case of small employers or employers with a small number of migrants in employment, the interviewed lawyers doubt whether the employer is well-informed about its obligations as a sponsor. One point requiring attention is the lack of alternatives, both in relation to work that does not meet the criteria for highly skilled work as well as the employer who does not fit the profile for being a authorised sponsor. In relation to study, the sponsor system also works well, but the monitoring of study progress is seen as problematic. This is experienced as being extremely labour-intensive, putting the students in question under more stress and not being effective as a measure in relation to migration control.

One point of attention beyond the scope of the purpose of residence, is the responsibility the Modern Migration Policy Act places on the authorised sponsor. This is first evident in the check of the requirements: does the authorised sponsor, for example, have sufficient expertise to check bank statements for authenticity or sufficient knowledge of the complex regulations on means and income requirements? A second point of attention in relation to passing on responsibility to the authorised sponsor, are the consequences for the sponsor and especially the foreign national if a mistake is made by the authorised sponsor (the sponsor can be fined and the foreign national can lose their right to residence). In the case of the au pair purpose of residence, both the interviewed au pair sponsors and the IND note that the present construction does not function properly in certain aspects. This has to do with the fact that the au pair agency as sponsor is held fully responsible by the legislator for reporting on the situation in a host family, though the au pair agency itself is not present in the home of the family.

The third area where the Modern Migration Policy Act has introduced changes, is the system of monitoring and enforcement. As a result of the Act, the check



on applications that are submitted by a authorised sponsor has shifted from monitoring the admissions to retrospective monitoring. Before a decision is taken, information is provided in various ways. This is referred to as preventive monitoring. During the admissions process, a check is conducted on the basis of detection of signals. After admission, the foreign national as well as the (authorised) sponsor are monitored both on the basis of random checks and on the basis of various signals. Retrospective monitoring is referred to as enforcement. The legislature has created a number of enforcement instruments. These are interventions leading to withdrawal of the right to residence, and suspension or withdrawal of the authorised sponsorship. In addition, the Modern Migration Policy Act provides the possibility to issue a warning or impose a fine on the sponsor and reclaim the costs from the sponsor for the deportation of a foreign national. Experience with imposing sanctions is still very limited. Therefore it is insufficiently clear which sanction is reasonable and effective and in which cases it should apply. Following the report from the Inspector of Security and Justice on the monitoring of the employer as authorised sponsor in November 2017, the monitoring of authorised sponsors has been intensified and a multidisciplinary team has been set up to establish a more differentiated sanction system. Another point requiring attention is that according to the sponsors and lawyers interviewed, there is a big difference between the service-oriented attitude of the IND in its preventive monitoring role, and its role as enforcer when monitoring after admission. The way in which the IND fulfils its enforcement role is described by the interviewed sponsors and lawyers as being unnecessarily formal, unreasonable or even intimidating.

Recommendations

The report makes a number of recommendations on the basis of the outcomes of the research. Two of the clearest recommendations are highlighted here. These recommendations concern the sponsor system and the system of monitoring and enforcement respectively.

Creating a threshold for recognition as a sponsor can prevent a lot of time, work and resources being spent on an application for recognition (by the sponsor and the IND) which subsequently is not or is hardly ever used. This can be done, for example, by placing an extra condition on a company or institution that a certain number of applications for admission are submitted each year. By at the same time making it possible that applications with the purpose of residence being highly skilled work and research can also be submitted by a sponsor who is not authorised, the companies and institutions who do not meet this threshold can still attract the migrants that they need.

A second recommendation concerns the development of a more differentiated system of monitoring and enforcement that takes better account of the relationship between the sponsor and the IND in relation to both the manner of monitoring and the imposition of sanctions and making interventions. When a mistake is made, it should be taken into consideration whether it was caused by human error or if it was done deliberately and what the consequences will be of an intervention for the sponsor and the foreign national.