

'Settlement of the 'old' Aliens Act's estate' scheme*The scheme*

Under the scheme, the following foreign nationals will be granted a residence permit for the purpose of settling the estate of the 'old' Aliens Act:

- a. Whose first application for asylum was filed before 1 April 2001, or who reported before 1 April 2001 to the Immigration and Naturalisation Service (IND) or Aliens Police with a view to filing an application for asylum,
- b. Who has uninterruptedly lived in the Netherlands since 1 April 2001, and
- c. Who, insofar as applicable, has confirmed in writing in advance that they will unconditionally withdraw the pending proceedings when being granted a permit under the scheme.

Moreover, the following people will be allowed to stay under the scheme: family members of a foreign national who can be granted a permit under the scheme, if these family members entered the Netherlands by 13 December 2006 at the latest and insofar as the family tie already existed before the principal foreign national arrived in the Netherlands. This also applies to children born in the Netherlands whose parent(s) are allowed to stay here by virtue of the scheme.

Contraindications

Apart from these conditions, the following contraindications apply in all cases to the scheme:

- a. the foreign national is a danger to public order (including Article 1F of the Geneva Convention on Refugees) or national security,
- b. the foreign national already has a residence permit, other than a temporary residence permit referred to in this scheme,
- c. the foreign national is an EU/EEA subject, or
- d. the foreign national has given various identities or nationalities in the various proceedings of which it has been established at law that they cannot be considered to be his identity/nationality.

Family formation

Individuals who formed a family on or before 13 December 2006 in the Netherlands with a foreign national who can be awarded a permit under the scheme, may apply for a regular residence permit to stay with the principal foreign national. They will be exempted from the requirement to hold a provisional residence permit, the requirement of sufficient income and the obligation to pay fees. They will be so exempted if the application was filed later than the principal foreign national was granted a permit under the scheme. The other requirements must be met in full. The permit will be granted under the restriction relating to family formation.

The uninterrupted stay in the Netherlands since 1 April 2001

Uninterrupted stay since 1 April 2001 will only be assumed if:

1. the foreign national belonged to the target group of the "Repatriation" project on 13 December 2006 (original project and lateral influx) and who had government support,
2. the foreign national was waiting for a decision on their application for a residence permit in the Netherlands on 13 December 2006,
3. the foreign national had a residence permit on 13 December 2006, or
4. evidence for it is submitted in the form of a statement from the Mayor of the municipality in which the foreign national actually lives.

In the first three cases, the foreign national's place of residence in principle is known to the IND or the Repatriation and Departure Service (DT&V). Otherwise, the uninterrupted stay must be evidenced by a statement from the Mayor of the municipality where the foreign national actually lives. This statement must confirm that there is evidence that the foreign national has stayed in the municipality in emergency accommodation since 1 January 2006 – or since any time before 13 December 2006 following their efflux from the "Repatriation" project. If the foreign national stayed in various municipalities, the statement from the Mayor must also cover the stay in the other municipalities.

Emergency accommodation is taken to mean a form of support known to the municipality (in terms of providing accommodation and maintenance) that is not provided by the national government and that is made available in a municipality.

The residence permit will not be granted if it can be demonstrated that the foreign national left the Netherlands after 1 April 2001. Demonstrable departure from the Netherlands may be evidenced by, among other things, another EU Member State's claim against the Netherlands regarding the foreign national in question. Moreover, the departure may be evidenced by controlled departure (such as removal or repatriation facilitated by IOM), a transfer under the Dublin Convention or otherwise.

If it cannot be demonstrated that the foreign national has left the Netherlands, if the statement of the Mayor shows that the foreign national has lived in that municipality for the entire year of 2006 in emergency accommodation, they will be assumed to have uninterruptedly lived in the Netherlands since 1 April 2001.

Withdrawing pending proceedings

This scheme is intended to settle the estate of the 'old' Aliens Act while minimizing the workload of the IND. It follows from this that the foreign nationals must confirm in writing that any pending proceedings will be unconditionally withdrawn when they are granted a residence permit under this scheme. Any legal fees or court fees already paid will not be refunded.

Family members

Family members will be taken to mean:

- a. any foreign national aged eighteen or over married to or having a civil registered partnership with – valid under Dutch law, including private international law applicable in the Netherlands – the principal foreign national, or being the biological or lawful parent of a biological or lawful child of the principal foreign national engaged in a permanent and exclusive relationship with the latter,
- b. any minor biological or lawful child of the principal foreign national that actually belongs to the latter's family and of whom that principal foreign national has lawful custody,
- c. the adult biological or lawful child of the principal foreign national dependent of the latter to such an extent that he belongs to the principal foreign national's family for that reason.

In case of family formation, the spouse or partner must be aged 21 or over, in accordance with the provisions of the prevailing policy.

For the assessment of the above age limits of 18 and 21 years respectively, 13 December 2006 is the reference moment.

Danger to public order

A residence permit to be granted under the scheme will not be awarded if the foreign national forms a danger to public order. This is the case if

- a. the foreign national has been sentenced to a term of imprisonment or another liberty-restricting measure for a crime and the term of the non-suspended imprisonment/measure to be enforced in total is at least one month,
- b. Article 1F of the Geneva Convention on Refugees has been invoked in a decision, or
- c. the foreign national is a family member of another foreign national against whom Article 1F of the Geneva Convention on Refugees has been invoked.

In case of community service for drug-related, sexual or violent crimes, the term of imprisonment replaced by community service determined by the court will be used as the starting point. In calculating whether there is a minimum one-month prison sentence or measure, several convictions may be added. The court order sentencing the foreign national for a crime need not be final and conclusive.

Criminal acts committed or punished abroad shall also be taken into account in assessing whether or not they are a danger to public order, insofar as the charges are considered crimes under Dutch law. That also applies if the crime under non-Dutch law is a violation, while considered a crime under Dutch law. Whether or not the crime is one under Dutch law will be assessed on the basis of the criminal provisions of the Dutch Penal Code or special Dutch criminal laws.

Prescription

A crime committed – as is the prevailing policy regarding first admission – is not used against the foreign national for ever. A distinction is made between drug-related, sexual and violent crimes on the one hand and other crimes on the other.

For a conviction for a drug-related, sexual or violent crime, the period during which the conviction is a contraindication for being granted a permit is ten years. For a conviction for another crime, the term is five years. The term commences on the day of release after execution of the term of imprisonment or measure.

The term of five or ten years, as the case may be, does not apply if the foreign national is a repeat offender or if there are serious reasons to assume that the foreign national (or any family member) is guilty of acts referred to in Article 1F of the Geneva Convention on Refugees.

To assess whether or not there is immunity from prosecution through lapse of time with a view to this scheme, 13 December 2006 is the reference moment. If immunity from prosecution through lapse of time is the case after this date within the context of public order, foreign nationals may not derive any rights from that for the purpose of this scheme.

Danger to national security

The residence permit will not be granted either if the foreign national could constitute a danger to national security. This does not require any criminal sentence. However, there must be actual clues that the foreign national could constitute a danger to national security. Where there are actual clues, one must in the first place consider an official report from the Dutch General Intelligence and Security Service (*Algemene Inlichtingen- en Veiligheidsdienst*). As the occasion arises, the assumption may also be made on the basis of an official report from a ministry (national or foreign) or other intelligence service.

Holders of a residence permit

Foreign nationals that already hold a residence permit will not be eligible for a residence permit under this scheme. The reason behind this is that these individuals already have certainty about their position, so that they do not require a scheme. An exception is the foreign nationals that filed an application for asylum before 1 April 2001 in the Netherlands and were later granted a temporary residence permit as a refugee by virtue of a policy of categorical protection or a temporary residence permit under any of the following restrictions: "residence because of medical emergency situation", "under the restrictions referred to in B9 Aliens Act implementation guidelines (*Vc B9*)", "residence as an unaccompanied minor foreign national" or "residence as a foreign national unable to leave the

Netherlands through no fault of his/her own". Only holders of these residence permits will, insofar as they meet the other conditions, be made a one-off offer to convert their residence permit into a residence permit by virtue of this scheme.

Identity and nationality

Foreign nationals who have given various identities or nationalities in the various proceedings of which it has been established at law that they cannot be considered to be their identity/nationality will – as stated above – not be granted a residence permit by virtue of this scheme.

In the other cases in which there is doubt about the actual identity or nationality of the foreign national and this has been established at law, the foreign national will be granted a period of two months to submit proof of their real identity. This way, a residence permit may be granted on the basis of the correct identity and nationality data. This means in principle that documents must be submitted in evidence of the foreign national's identity and nationality. If the foreign national cannot prove his identity with documents, he/she will be given the opportunity to make a statement about his/her real identity and to sign the statement. If it turns out at any moment that the identity or nationality presented by the foreign national in this way is not his/her real identity/nationality, the State Secretary may repeal the residence permit granted or refuse to renew it.

Procedural provisions

The residence permit by virtue of this scheme will be granted *ex officio*. If the permit can be granted on the basis of data known to the IND or DT&V, this procedure will be started straight away. In the other cases, the assessment will be commenced after the Mayor of the municipality where the foreign national lives has sent the IND the statement mentioned above, showing that the foreign national has lived in the Netherlands at least the entire year of 2006. The IND will assess whether or not the foreign national is eligible for a residence permit. The aim is to set up an efficient and orderly procedure and to prevent that foreign nationals en masse file an application with the IND, causing serious delays in the finalization of the scheme or bringing it to a halt. If the foreign national files an application nonetheless, legal fees will be charged in accordance with the current policy, and the requirement of having a passport and a provisional residence permit will apply.

Limitation and employment market endorsement

The residence permit will be granted under the restriction of 'settlement of estate of 'old' Aliens Act'. The employment market endorsement will read: 'Work permitted without limitation, no work permit required', which means that the foreign nationals in question are free to enter the employment market and do not need a work permit.

Starting date and validity of the residence permit

The residence permit will be granted on the date at which the scheme will take effect. This will be two days after the scheme has been published in the Dutch Government Gazette (*Staatscourant*). The residence permit will be granted for a year.

The independent residence permit for continued residence

Foreign nationals who have been the holder of a regular residence permit under the restriction of 'settlement of estate of the 'old' Aliens Act' for a year will, except where there are contraindications – granted a temporary regular residence permit under the restriction of 'continued residence after residence by virtue of the 'settlement of the estate of the 'old' Aliens Act Scheme'.

Integration obligation

Foreign nationals who are granted a residence permit by virtue of this scheme have an obligation to integrate. If these individuals receive benefit referred to in the Integration Decree (*Besluit inburgering*), they will be eligible for an offer from the municipality for an integration course. Foreign nationals receiving the residence permit by virtue of this scheme and living in the emergency accommodation will be made an offer, so that they can start the integration course while still residing in the emergency accommodation.

End of Repatriation project

Schedule 1: 'Settlement of the 'old' Aliens Act's estate' scheme

With a view to the implementation of this scheme, the Repatriation project ended on 1 May 2007. The departure of all foreign nationals who do not fall under the scope of the scheme and that have to leave the Netherlands will be arranged by the DT&V.

Departure from the Netherlands of foreign nationals not eligible for a residence permit under this scheme

In accordance with the letter from the Prime Minister to the House of Representatives of 13 December 2006 (House of Representatives, session year 2006-2007, 19673, 1114), no irreversible steps are taken at this moment in respect of foreign nationals who may fall under the scope of the scheme, except for the contraindications mentioned in it. This means that any liberty-restricting measures imposed on those foreign nationals have been or will be lifted. It also means that the accommodation and other support provided to those foreign nationals has not ended. Liberty-restricting measures, such as the obligation to report, will be continued, however. As for foreign nationals of whom the IND holds in its official capacity that they are not eligible for a residence permit by virtue of the scheme, the DT&V will arrange their departure. The "mark time" rule does no longer apply to them. For as long as the scheme is implemented, W, or W2 documents will not be issued outside the current context of aliens legislation.