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Newsletter Special Immigration

June 2013

In this Newsletter “Special” we are giving you a brief overview of the latest developments.

Modern Migration Policy Act and legislative proposal to review Foreign Nationals Employment Act

On 1 June 2013 the Modern Migration Policy Act (hereinafter: “MMP Act”) has entered into force. In this special the key changes and the obligations for (knowledge migrants) employers will be set forth as well as the key changes in the legislative proposal to review the Foreign Nationals Employment Act.

Modern Migration Policy Act

The government pursues a selective migration policy that facilitates the quick and easy admission of migrants the Netherlands needs. For this purpose the MMP Act has entered into force on 1 June 2013. The sponsor has an important position in the MMP Act. The MMP Act provides the option of being recognized as a sponsor. Recognition is possible for legal persons only. The recognized sponsor has the advantage that the accelerated procedures can be used. For the knowledge migrant scheme there is in principle a target term of two weeks prior to application for a temporary residence permit (“MVV”), the application for a residence permit, the application for an extension and the amendment of a residence permit.

The key changes resulting from the introduction of the MMP Act are listed below:

- Companies that had a knowledge migrant scheme certificate and for which the Immigration and Naturalisation Service (hereinafter: “IND”) honoured an application for a residence permit in the year preceding the entry into force (i.e., in the period from 1 June 2012 to 1 June 2013), have become recognized sponsors by operation of law. Companies that do not meet these conditions can file an application for recognition subject to a fee of EUR 5,000. Companies that first want to use the knowledge migrant scheme must pay EUR 5,000 to be admitted. They are obliged to become a recognized sponsor. The knowledge migrant scheme certificate was terminated by operation of law when the MMP Act was introduced. A recognized sponsor can make use of the accelerated procedures for the purpose of the applications for knowledge migrants;

- Employers are subject to a requirement to keep records, to furnish information and to provide due care. The employer must keep records for 5 years after termination of a contract, must sign out a knowledge migrant and must notify the employer on relevant changes. In the meantime and afterwards the IND will check if the sponsor meets the conditions for recognition, whether the employee meets the conditions on the basis of which the residential permit has been issued and whether the sponsor fulfils his obligations. The IND will request documents from the sponsor and fully review them. The IND will also make use of information from other government agencies, such as the Dutch Tax Department, SZW Inspectorate, Social Security Information and Investigation Service and Fiscal Intelligence and Investigation Service;
- The application for a temporary residence permit and for a residence permit have been merged into one procedure, the Admission and Residence Procedure (TEV);
- An application for a residence permit can already be filed while the person concerned is still abroad.

If your company intends to employ a knowledge migrant obliged to have a permit in the Netherlands shortly, we advise you to already apply for recognition as a sponsor if no recognition as a sponsor has yet been applied for or has been granted. After recognition a permit for the relevant employee can be applied for.

Legislative proposal to review Foreign Nationals Employment Act

The reason for the legislative proposal to review the Foreign Nationals Employment Act is a tightening of the legislation. The planned effective date of this revision is 1 July 2013, but it looks like this is no longer realistic. Therefore the content is not yet certain and is subject to change.

The key changes are discussed below:

- With regard to the prioritized supply in the Dutch employment market and the rest of the European employment market the Employee Insurance Agency only needs to investigate if sufficient jobseekers are available who meet the job requirements of the vacancy. It no longer solely concerns available supply. If an employer has not made sufficient recruitment efforts to fill the vacancy from the prioritized supply, the Employee Insurance Agency must reject the application for a work permit for non-EU nationals. The optional ground for refusal is converted into a compulsory ground for refusal;

- If a sector of industry makes insufficient effort to fill vacancies from the prioritized supply, a permit limit can be set for this sector. The quota can be applied if it is established that a sector of industry makes insufficient use of the option to educate or retrain people for the vacancy for which a work permit for non-EU nationals is applied for;
- A work permit for non-EU nationals for which the employment market test has been taken will be issued for a maximum term of one year. The employer must file a new application if the permit has lapsed after one year. In respect of work permits for non-EU nationals that have been issued in the context of placements in a group context this in principle does not apply because there is no requirement here to review on the basis of the prioritized supply;
- On the basis of the proposal employees are to receive at least the full minimum monthly wage, irrespective of the number of hours worked per month. The Employee Insurance Agency has the duty to reject the application if there is no remuneration on market terms;
- Employees who have been working in the Netherlands for a consecutive period of at least 5 years on the basis of a valid work permit and residence permit will be able to work in the Netherlands after 5 years without owning a work permit. This period is extended from 3 to 5 years;
- The suspensive effect during a complaint and appeal procedure against the decision to withdraw the work permit for non-EU nationals has been abolished.

Questions ?

Should you have any questions, please do not hesitate to contact Marlies Koggel.

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