

Kingdom of The Netherlands

Executive Summary

Under Dutch immigration law, there are various procedures available in order to obtain the required work- and residence permits for foreign employees. These procedures range from temporary business visa to permanent residence permits. Often more than one procedure is worth consideration. Requirements and processing time vary by procedure.

Key Government Agencies

The Ministry of Foreign Affairs issues visas through Dutch embassies and consulates around the world.

The Immigration and Naturalization Service (“Immigratie- en Naturalisatiedienst” or “IND”) is part of the Ministry of Justice and, in general, is responsible for the decision in the visa applications and residence permit applications.

The Public Employment Service (“UWV WERKbedrijf”) handles work permit applications, with investigations and enforcement actions involving employers and foreign nationals being the particular focus of the Labour Inspectorate.

Current Trends

In a bid to have a modern immigration policy based on the participation of migrants in the Dutch society, immigration regulations are changing rapidly.

A new Act has been passed (and is expected to take effect on January 11, 2011) making the Netherlands more attractive to those whom are urgently needed to help strengthen the Dutch economy. The Act will

introduce a simplification of the residence permit procedures and will reduce the administration burden for companies.

The government envisages that the new immigration policy facilitates a quick and alert reaction to the needs of the society and labor market, as well as an optimization of the possibilities that immigration offers. The contribution of the migrants to Dutch society is the basic element in the new regulations.

Business Travel

Not exceeding three months

Foreign nationals coming to the Netherlands from most countries are generally required to have a tourist or a business visa to enter the Netherlands. It is advisable to check with the Dutch embassy or consulate to confirm whether a visa is required, since the countries qualifying for visa waiver can change.

The visa is issued for a maximum period of 90 days, and is not extendible. Furthermore the holder of the visa may remain no longer than 90 days within 180 days within the Schengen Area, whose member states include: Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Spain, Slovakia, Slovenia, Sweden and Switzerland.

Visa Waiver

Passport holders of the following countries do not require a visa for a stay of ninety days or less: Andorra, Argentina, Austria, Australia, Brazil, Brunei, Bulgaria, Canada, Chile, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, El Salvador, Estonia, Finland, France, Germany (Federal Republic), Greece, Guatemala, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Japan, Liechtenstein, Lithuania,

Malaysia, Malta, Mexico, Monaco, New Zealand, Nicaragua, Norway, Panama, Paraguay, Poland, Portugal, Romania, San Marino, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, United Kingdom, United States of America, Uruguay, Vatican City, and Venezuela.

Temporary Stay (MVV) Visa

A foreign national intending to remain in the Netherlands for more than 3 months must apply for a residence permit. The conditions for obtaining a residence permit depend entirely on the purpose of coming to the Netherlands. A foreign national wishing to work in the Netherlands must, usually, obtain three types of documents:

- A temporary residence permit (“Machtiging tot Voorlopig Verblijf” or “MVV”), which enables the holder to enter the Netherlands. An MVV is not required for citizens of the European Economic Area, the European Union and Switzerland, Japan, Canada, Australia, United States, Monaco, and New Zealand. Foreign nationals in the possession of these nationalities may enter the Netherlands without an MVV or business visa and may apply for a residence permit;
- A residence permit, which enables the holder to live in the Netherlands; and
- Under certain conditions, a work permit, which enables the holder to work in the Netherlands.

The foreign national can apply for the MVV visa in the country of residence, or the employer in the Netherlands or the person with whom the foreign national will be staying in the Netherlands can file the application in the Netherlands.

Processing takes between two weeks to six months, depending on the purpose of stay. For employment purposes, and if the Dutch employer applies by means of the expedited procedure, the MVV will usually be granted within 2-3 weeks. During the MVV procedure, the foreign national is not allowed to enter or reside in the Netherlands.

Residence permit

A foreign national who intends to stay in the Netherlands for more than 3 months and who has gained entrance to the Netherlands, is required to obtain a residence permit (“verblijfsvergunning”). A residence permit will not be granted if the foreign national was first required to obtain an MVV.

The residence permit is generally issued for a maximum of 1 year and if no changes of circumstances have occurred, it is extendible on a yearly basis. After having been in the possession of a residence permit for 5 years, the foreign national may apply for a permanent residence permit. This permanent residence permit is renewable every 5 years.

Training

A trainee is a foreign employee that will receive on-the-job training for a maximum period of twenty four weeks. The purpose is to allow foreign nationals to receive training and experience abroad that is required for their function back in their home country.

A work permit application must be filed with the UWV. A detailed training program must be presented as well as declarations from the employer and the Dutch company that the trainee will not fulfill a vacancy in the Netherlands. Compensation for the training is required.

As soon as the foreign employee has gained entrance to the Netherlands and, if intending to remain for a period longer than 3 months (and up twenty four weeks), a residence permit application must be filed. This residence permit will be granted as soon as the work permit has been issued.

Employment Assignments

An employer who wants to recruit an employee from outside the European Union (“EU”) or European Economic Area (“EEA”) usually needs to apply for a work permit for that employee. The Netherlands has temporarily opted out for the full mobility of the workforce in respect of two new EU members (Romania and Bulgaria), which means that those nationals require work permits.

There are different procedures for the work permit applications. The applicable procedure depends entirely on the applicant’s specific circumstances, the nature of the current employer abroad, and the nature of the company offering the work in the Netherlands.

Generally, the Dutch employer must prove that the labor market has been scanned for workers who have priority. In this respect, the employer must prove that the vacancy has been reported to the UWV and, usually, to the European Employment Service (“EURES”) for at least 5 weeks prior to the work permit application. Furthermore, the employer is required to advertise the job in a Dutch national newspaper, a professional journal, and must have engaged a recruitment office. If a company is unsure whether it must report the vacancy, the company is advised to consult an attorney. In order to avoid unexpected refusals, companies should be cautious about assuming that a job does not need to be reported to the various authorities.

The application procedures for different types of employment require extensive preparation. This is not only necessary for the application

as described above, but also for those who want to stay in the Netherlands as self-employed, for those who want to work in a university, the field of sports, or elsewhere.

The different types of procedures for which a recruitment period as stated above is not necessary, are mentioned in the below paragraphs.

Intra-company Transfer

Multinational companies seeking to temporarily transfer foreign employees to the Netherlands can do so under the intra-company transfer, if:

- The employee will receive an annual salary of at least € 50,183;
- The multinational company has affiliates in at least two different countries; and
- The multinational company has a worldwide turnover of at least € 50 million.

The work permit application generally takes between 3-5 weeks (nearer to 3 than 5 weeks) and will be valid for a maximum of three years. The residence permit will be granted within six months after the approval of the work permit and is valid for one year. The residence permit can be extended on a yearly basis as long as all the conditions (intra-company transfer) are still met with. As soon as the foreign employee has been in the possession of work and residence permits for three consecutive years, work in the Netherlands is permitted without having to be in the possession of a work permit.

The spouse or partner of the foreign employee may only work if their employer is in the possession of a work permit.

Customer producer relationship

The “customer producer relationship” allows foreign nationals to work in the Netherlands on a work permit if:

- There is not an actual employer in the Netherlands, but only a customer;
- The employee will be sent to the Netherlands in order to supply/adapt/install goods on a contract basis as well as provide instructions on the use of the goods;
- The employee has been employed for at least one year;
- The salary of the employee is less than the value of the supplied goods; and
- The supplied goods must be produced primarily by the employers company.

The work permit application will take 3 to 5 weeks and the work permit will be valid for a maximum of 3 years. The residence permit will be granted within 6 months after the approval of the work permit and is valid for 1 year. The residence permit can be extended on a yearly basis as long as all the conditions are still met. As soon as the foreign employee has been in the possession of work and residence permits for 3 consecutive years, work in the Netherlands is permitted without having a work permit.

The spouse or partner of the foreign employee may only work if their employer is in the possession of a work permit.

Knowledge Migrant

As of 2004, skilled and highly educated foreign workers do not require work permits for employment. In order to define the so-called

“knowledge migrant,” the choice has been made for one objective criterion - the salary. A knowledge migrant is a foreign national who will be employed in the Netherlands and receives an annual salary of at least € 50,183 or € 36,801 if age 30-years or younger.

An important requirement is that the Dutch affiliate must be admitted to the knowledge migrant regulation. The IND will first investigate whether there are any objections to the admittance of the affiliate. This procedure takes approximately 2-3 weeks after the IND has received a complete request for admittance.

After admittance, the Dutch affiliate may apply for the residence permits for employees who fulfill the salary criterion. The employee will receive a residence permit for five years, assuming that the passport and employment contract are valid for at least five years. Should this not be the case, then the residence permit will be issued for the shortest validity period mentioned in the employment contract or passport.

The employee may start working in the Netherlands upon receipt of the decision in the residence permit application. The spouse or partner of the employee may work in the Netherlands without a work permit as soon as the residence permit of the spouse or partner has been granted.

Self Employment

A foreign national can be classified as a self-employed person upon proof:

- Of ownership of more than 25% of the shares in a Dutch limited liability company or if the sole owner of a company; and

- That an essential Dutch interest will be served. This latter requirement is extremely difficult to fulfill and, as such, residence permits as a self-employed person are rarely issued.

Although a work permit is not required, a residence permit is. The residence permit will be issued as long as the company serves an essential Dutch interest. Furthermore, the IND expects that the business will provide the foreign national with sufficient long-term means of support.

Dutch-American Friendship Act

Under the Dutch-American Friendship Act, US citizens are allowed to remain in the Netherlands as a self-employed person without having to serve an essential Dutch interest. To qualify, the US citizen must be coming either to conduct trade and activities related to this trade between the Netherlands and the US or engage in a professional practice in which a considerable amount of money has been invested. In this context, it should be noted that “professional practice” does not include the free profession (*i.e.*, lawyers, dentists, doctors *etc.*).

The amount of money that is brought into the company is one of the determining factors as to whether or not to grant the residence permit. The following is applicable:

- General partnership (“vennootschap onder firma”). At least 25% of the firm capital, with a minimum of € 4,500;
- Limited partnership (“vennootschap onder commandite”). For the managing partner, the same as the general partnership is applicable. Since the limited partner cannot be classified as a self-employed person under Dutch immigration law, limited partners cannot qualify;

- Private company with limited liability (“Besloten vennootschap”). At least 25% of the firm capital. The firm capital in the Netherlands must be at least € 18,000, so that the substantial capital must be at least € 4,500;
- Corporation (“Naamloze vennootschap”). At least 25% of the firm capital is at least € 45,000). The substantial capital must be at least € 11,250; or
- One-man operation. A minimum investment of € 4,500.

Other Comments

In addition to the employment-based permits, immigration to the Netherlands is possible through family-based immigrant permits or exchange programs.

Immigrants to the Netherlands are often interested to become Dutch citizens. This is possible after they have been in the possession of a Dutch residence permit for five consecutive years.