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The Netherlands – Modern Migration Policy Act Affects Roles/Duties of Employers

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Netherlands' long-awaited Modern Migration Policy Act ("MMPA")¹ will finally take effect on June 1, 2013. The introduction of the MMPA will mainly affect the role and status of employers, who will now become official sponsors with respect to immigration procedures. The MMPA will also simplify residence permit application procedures.

Given that the entry procedure for the Netherlands has been simplified, the government will more closely monitor compliance with the rules and step-up, where necessary, their enforcement. If an employer fails to follow the rules, sanctions will be imposed. These sanctions could result in employers being excluded from "accelerated procedures" (more on this below).

Status of the Sponsor

Under the MMPA, the employer will become the legal sponsor of its migrant laborers and can request residence permits for them. Only those employers that obtain "authorized sponsor" status will be allowed access to the Highly Skilled Migrant procedure (HSM).

When the MMPA takes effect, businesses with a current registration for HSM will automatically be given the status of "authorized sponsor," if they successfully completed at least one highly skilled migrant procedure between June 1, 2012, and June 1, 2013. (For a listing of these procedures, see <http://www.IND.nl>.)

Businesses without a current registration for HSM first need to submit a request for this status to the Immigration and Naturalization Service (*Immigratie- en Naturalisatiedienst*, "IND"). A government charge of EUR 5,000 will apply to obtain the sponsor authorization. And only companies that are registered in the Dutch Trade Register and that are deemed trustworthy business partners will obtain authorized status. The authorities will assess the business' continuity and solvency as well as the background of the managers and/or legal entity.

Rights and Obligations

The authorized sponsor will be entitled to request a residence permit via an accelerated procedure, under which the request can be submitted without the underlying documentation. For instance, no longer will it be required to submit such supporting documentation as a contract, etc. In those cases, the sponsor only needs to state that the immigrant meets the conditions for residence ("sponsor statement") and, in fact, the sponsor ultimately decides if the permit is granted. Government assessment will only be done after the fact.

In turn there are several obligations for the employer:

- 1 Information obligation – to report any interim changes that could affect the immigrant's residence status and relevant changes in the sponsor's status.
- 2 Administration obligation and obligation to retain records – to include certain relevant information regarding the immigrant in its records and retain these records for a certain period.
- 3 Duty of care – to inform the immigrant of the relevant legislation with regard to his or her stay in the Netherlands.

Now Combined: One Procedure for Entry and Residence

One key benefit of the MMPA is that the procedures for temporary residence permits (special entry visa, or MVV visa) and residence permits are now combined. This means there will be only one procedure for entry and residence (the "TEV procedure").

Under the new legislation, the request for residency (and if required, including the MVV-visa) needs to be made prior to the arrival in the Netherlands. The residence permit should be ready for collection at the IND office immediately after arrival in the Netherlands.

Longer Validity and Increased Flexibility

As permits will now be issued for the total expected duration of stay in the Netherlands, many permits will be valid for a longer period and in many cases, requests for an extension will be unnecessary. At the same time it will be easier for migrant laborers to change employers without having to request a new residence permit.

Processing Times

The target period of two weeks for HSM applications will remain unchanged. For other migrant laborers a slightly extended period of seven to eight weeks will apply.

Compliance and Sanctions

Since entry procedures have been simplified and the sponsor is in a stronger position, more emphasis will be placed on monitoring "after the fact" and compliance. The MMPA provides that the IND will verify the following:

- Does the migrant meet the conditions for the issued residence permit?
- Does the authorized sponsor meet the conditions for authorization?
- Does the authorized sponsor meet its obligations?

The IND will primarily request documentation after the fact and examine it thoroughly. If it becomes clear that the obligations are not being met, then sanctions can be imposed. In general, a first warning is given, but ultimately administrative penalties can be imposed or the IND can decide to suspend or even fully withdraw the authorization.

In case of suspension or withdrawal of the authorization, the employer will no longer be eligible for the accelerated procedure. In addition, it can also affect the residential status of the current migrant laborers as their residence permits could be withdrawn.

Footnote:

1 "Wet modern migratiebeleid" published in the "Staatsblad van het Koninkrijk der Nederlanden, Jaargang 2010/290" - http://www.eerstekamer.nl/wetsvoorstel/32052_wet_modern_migratiebeleid .

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The KPMG International member firm in the Netherlands, KPMG Meijburg & Co. can provide immigration advice. For assistance or further information, please contact one of the following immigration professionals with KPMG Meijburg & Co.:

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