

Ministerie van Veiligheid en Justitie

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**Directorate-General for
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Migration Policy Department
Legal and General Affairs

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Our reference
438215

*Please state the date and
reference in your reply. Please
only discuss one subject in
your letter.*

Datum 22 november 2013
Onderwerp Your request for information

Dear Ms G.,

Following your request, I am please to send you information about the policy on unaccompanied minors who are nationals of third countries in the Netherlands.

Unaccompanied minors of a third country (UM) younger than 18 years of age who were not accompanied by a parent or an adult or a relative by blood or marriage upon entry into the Netherlands. This term covers UM who have submitted asylum applications as well as UM who are not asylum seekers.

Immediately upon the entry of an UM into the Netherlands or upon finding an UM without legal residence by the authorities, an UM is brought into contact with Stichting Nidos, which is responsible for the guardianship of UM. Nidos submits an application for guardianship to the court to this end. When the guardianship is granted, the responsibility for the child rests with Nidos. Nidos is authorised to represent the UM interests during the asylum procedure and may be assisted by a lawyer in this procedure. The accommodation of an UM is related to his age. Nidos places UM younger than 12 years of age in foster families which preferably have the same cultural background as the UM; UM older than 12 years of age are placed in the Central Agency for the Reception of Asylum Seekers¹ (COA), whereby the COA takes account of the individual development and the degree of self-reliance of the UM. The COA has different types of reception, depending on the UM age, degree of independence, and personal development. On the basis of these factors, UM are placed in a children's residential group, a small residential unit or a so-called campus. This reception model is currently being revised.

In addition, an UM between 13 and 18 years of age who has been the victim or threatens to become the victim of trafficking in human beings or smuggling of migrants may be placed in a protected reception location. This category of UM is linked to lawyers specialised to that end.

The COA and Nidos jointly determine the composition of the daytime activities and any education of the UM. The activities and education depend on the

¹ The COA is responsible for the reception, supervision and departure (from the reception location) of asylum seekers coming to the Netherlands.

prospects of return or integration. The activities composed in this context are therefore aimed at either preparing the UM for a life in the country of origin or at a continuation of his residence in the Netherlands.

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Departure from the Netherlands

If a longer period of residence in the Netherlands is no longer possible, an employee of the Return and Departure Service² (DT&V) coordinates the departure process. This supervisor, who specialises in departures, contacts the guardian and together they discuss the departure process. The DT&V may subsequently act as an intermediary in obtaining the required travel documents at the authorities of the country of origin. Depending on the country of origin and the personal wishes of the minor, a customised return is facilitated. In this context, the best possible link is sought with existing projects of community-based organisations or of the International Organisation for Migration (IOM). Assistance may consist in reception, guidance, study or work, and accommodation in the country of origin. The departure is considered *only* if adequate reception facilities can be realised in the country of origin.

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Revision of UM policy

A new policy on UM has been pursued since 1 June 2013. The purpose of the revision was to provide clarity about the prospects of the UM quickly. When an UM does not qualify for a residence permit, the emphasis is on ensuring that the UM returns to the country of origin as quickly as possible. The UM policy pertains to UM who do not need asylum protection.

Reason for the revision

The Netherlands has had a special policy for UM since 1992. A substantial increase in the influx of UM and the number of cases of abuse in the second half of the 1990s resulted in a major revision of the policy framework that had been in place until that time.

The most conspicuous changes were the broader application of the age assessment tool, the general use of adequate reception facilities in the country of origin, the abolition of the possibility of continuation of the UM permit until after the age of 18 years, the possibility of interviewing UM younger than 12 years of age, and the possibility of refusing permits to UM who tell lies or remain silent.

The past few years have shown that the policy framework had to be revised again, one of the reasons being the problems in practice. The DT&V is confronted with large numbers of UM whose prospects change after years of residence in the Netherlands and they must still be prepared for return. The IND has problems due to lengthy review procedures of UM whom had initially been granted an UM permit, but which were withdrawn or not extended because adequate reception facilities became available as yet (e.g. in Angola). Only a small number of UM actually returns to the country of origin.

Various studies have shown that the chance of return for UM who do not qualify for international protection is largest if the third country national is told as clearly and as quickly as possible what his prospects are. The rate at which the

² The Return and Departure Service (DT&V) coordinates the actual departure of a third country national who do not have the right of residence in the Netherlands. As a professional party responsible for implementing the government's return policy, the DT&V takes the initiative to ensure that the departure is performed carefully, with dignity, and in time.

procedures are handled is essential in this context. In other words: the quicker clarity is provided, the larger the chance of return.

Only a small number of UM actually returned to the country of origin. The rate at which procedures are handled is essential in this context. Increasing the rate of the procedures is one of the key objectives of the current government.

Starting points for the revision of the UM policy

The Netherlands advocates a strict and just asylum policy. In keeping with this, an UM who is entitled to protection will be granted an asylum permit, and an UM whose asylum application is refused after careful consideration must return to the country of origin on the condition that adequate reception facilities are available. Just as I have planned to streamline the admission procedures, it is also my ambition to provide UM clarity sooner and permanently and to prevent the accumulation of procedures. Therefore, the UM permit has been cancelled in the new policy. Providing clarity about the residence prospects and quick return to the country of origin when protection is not at issue is in the child's interests.

In addition, a qualitatively high-principled admission policy is inextricably linked with an effective return policy. The return of UM who have exhausted all legal remedies, on the condition that adequate reception facilities are available, is of great importance. If it has established in a careful manner within the framework of the asylum procedure that an UM does not qualify for protection, it is possible to aim the efforts at return sooner and to a maximum extent. These efforts will in the first place be aimed at reunification with the parents or other relatives. If it turns out that this is not possible, other forms of local reception facilities are sought, such as shelter homes. Investments in additional local reception facilities have already been made for this purpose.

A successful return depends for a considerable part on the cooperation of the UM, his environment, the embassies, and the reception facilities in the country of origin. It requires time to realize this cooperation and adequate reception facilities. Therefore, it is important that a reasonable term be applied to work on return. The clarity envisaged by the revision is also meant for UM who are not entitled to protection, but of whom it is clear that they cannot return to the country of origin through no fault of their own. Therefore, the no-fault policy for UM has been amended. The new policy applies a maximum period of three years, which commences at the time the application is submitted. By setting a maximum period, the period in which an UM is kept in uncertainty about his residence prospects is limited. When it turns out after not more than three years that adequate reception facilities cannot be realized, through no fault of the UM, and the UM is still a minor, the UM may qualify for a no-fault permit. The no-fault policy is meant for exceptional cases. Also in the case of a minor the principle applies, after all, that anyone who wishes to return can do so, as long as adequate reception facilities are available.

The European Commission and the Council adopted an action plan for UM in June 2010. Important aspects of the revision of the UM policy are in keeping with the action plan. For example the starting point to decide as quickly as possible about the minor's future and by directing the primary efforts at reunification of a child with its parents or other relatives.

Assessment framework and admission policy

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The framework within which the admission application of UM is assessed in the Netherlands has remained unchanged. The Convention on Refugees and the guidelines of the UNHCR, the European Convention on Human Rights, the International Convention on the Rights of the Child, and the European Directives on qualification, procedures, reception, and return have been included in the Aliens Act 2000 and subordinate legislation.

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Vulnerable group

The vulnerable position of children is expressed in many aspects of Dutch immigration policy. Children who are staying in the Netherlands illegally also have the right, for example, to receive education and housing. In addition, there is the fact that minors, whether unaccompanied or otherwise, receive special guidance and preparation in the process of submitting the asylum application and the handling thereof, and the fact that the starting point has been included in the policy that minors will not be detained pending deportation, except in a few exceptional situations (listed exhaustively). The admission policy also takes account of child-specific situations and the child's interest. This is expressed, for example, in the policy on child soldiers and the policy on the threat of genital mutilation with girls.

I trust that this information is sufficient for your purposes.

The State Secretary of Security and Justice,

F. Teeven