

THE NETHERLANDS

The Netherlands is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First and Second Optional Protocols. In 2000, 43,895 first-time applications for asylum were received, and at the end of the year, 17,936 were pending first instance decisions.¹ 32,579 asylum seekers filed applications in 2001, and in January 2002, 2,377 asylum applications were lodged.² In the first quarter of 2002, 6,299 applications were filed.³ The Netherlands is currently preparing to introduce tough immigration policies. In mid-2002, the LPF movement approved several radical measures on migration, including making all asylum seekers pay large sums of money to remain permanently in the country. Also, under the proposals, a new security force will be set up to deal exclusively with illegal immigration. Asylum seekers whose applications are unlikely to succeed should be deported within 24 hours.⁴

The new Aliens Act 2000 came into force on April 1, 2001. Under the new legislation, asylum seekers must lodge their application at one of four registration centers (AC's) in Rijsbergen, Zevenaar, Ter Apel, or Schiphol Amsterdam Airport.⁵ Within 48 hours of entry, the Immigration and Naturalization Service (called the "IND") determines admissibility and refers cases to the accelerated procedure. During this time, asylum

¹ U.S. COMMITTEE FOR REFUGEES, WORLD REFUGEE SURVEY 2001 at 240, *available at* <http://preview.refuges.org/world/worldmain.htm> (Immigration and Refugee Services of America 2001) [hereinafter USCR WORLD REFUGEE SURVEY 2001].

² UNHCR, The Official Homepage of UNHCR, *visited* March 11, 2002, <http://www.unhcr.ch>.

³ UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, ASYLUM TRENDS IN 28 INDUSTRIAL COUNTRIES: JANUARY TO MARCH 2001—JANUARY TO MARCH 2002, *available at* <http://www.unhcr.ch/cgi-bin/taxis/vtx/home/+2wwBmeIFXx8wwwwwwwwwwhFqAIRERfIRfgItFqA5BwBo5Boq5AFqAIRERfIRfgIcFqF+8afDm15BGowcoSnmagd1DBGon5Dzmxwwwwww/opensoc.pdf> (June 13, 2002) (last accessed Aug. 29, 2002) [hereinafter *Asylum Trends in 28 Industrialized Countries*].

⁴ *Dutch Getting Tough On Asylum Seekers*, BBC News (June 21, 2002), *available at* <http://news.bbc.co.uk/1/hi/world/Europe/2057726.stm> (last accessed Sept. 10, 2002).

⁵ U.S. COMMITTEE FOR REFUGEES, WORLD REFUGEE SURVEY 2002 at 198, *available at* <http://www.refugees.org/WRS2002>. (Immigration and Refugee Services of America 2002) [hereinafter USCR WORLD REFUGEE SURVEY 2002]; Dutch Refugee Council, *Asylum Procedure*, *available at* <http://www.vluchtelingenwerk.nl/en/sections> (last accessed Sept. 10, 2002) [hereinafter *Asylum Procedure*].

seekers remain in the AC, where they are screened for admissibility.⁶ When it appears impossible to make a decision through this accelerated procedure, applicants are referred to a Screening and Reception Center (OC), where there is more time to process their claims.⁷ Applicants with admissible claims undergo a second, more extensive interview, which forms the basis for assessment of their claims.⁸ The IND always detains individuals arriving by air who are determined to have inadmissible or “manifestly unfounded” claims unless they are unaccompanied minors.⁹

Asylum seekers found to be admissible are referred to one of several open Reception Centers and later to a center for asylum seekers (AZC) throughout the country, where they must stay until a decision is made on their claim. If the AZCs are full, asylum seekers may stay elsewhere, but are required to report regularly to an AZC.¹⁰

Rejected asylum seekers awaiting deportation are also detained provided removal is possible and documentation has been required. Such detention, however, must not exceed a month.¹¹

Asylum seekers are provided accommodation initially in screening and reception centers, and then in either residence centers or other facilities, depending on availability.¹² Asylum seekers not staying in state-run centers must report regularly to the centers.¹³ Financial assistance and medical care are provided to asylum seekers, and some center

⁶ DANISH REFUGEE COUNCIL, LEGAL AND SOCIAL CONDITIONS FOR ASYLUM SEEKERS AND REFUGEES IN WESTERN EUROPEAN COUNTRIES at 204-206, *available at* <http://www.english.drc.dk/publications/> (May 2000) [hereinafter DRC W. EUR. REPORT 2000].

⁷ *Asylum Procedure*, *supra* note 5.

⁸ USCR WORLD REFUGEE SURVEY 2002, *supra* note 5, at 198.

⁹ DRC W. EUR. REPORT 2000, *supra* note 6, at 209; EUROPEAN COUNCIL ON REFUGEES AND EXILES, STUDY ON THE AVAILABILITY OF FREE AND LOW-COST LEGAL ASSISTANCE FOR ASYLUM SEEKERS IN EUROPEAN STATES at 216-17, *available at* <http://www.ecre.org/research/legalassistance/index.shtml> (November 2001) [hereinafter ECRE EUR. STUDY 2001].

¹⁰ *Id.* at 214.

¹¹ ECRE EUR. STUDY 2001, *supra* note 9, at 217; DRC W. EUR. REPORT 2000, *supra* note 6, at 209.

¹² *Id.* at 214.

¹³ *Id.*; UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, RECEPTION STANDARDS FOR ASYLUM SEEKERS IN THE EUROPEAN UNION at 129 (July 2000) [hereinafter UNHCR EU REPORT 2000].

provide cooking facilities. Single men and women are housed separately in state-run centers.¹⁴

The Aliens Act 2000 also introduced a decision moratorium, which can be applied to freeze decision-making for claims of asylum seekers from particular geographical regions. This means that the Secretary of State has the right not to decide on these cases during that year. On December 14, 2001, a moratorium was implemented for asylum seekers from Afghanistan because of their unclear situation after September 11. The moratorium, which was originally implemented for three months, has now been extended to September 15, 2002.¹⁵

Is there independent review of the detention decision? Yes.

There is an automatic review of detention within 10 days by the District Court.¹⁶ If an asylum seeker is deemed inadmissible, she may appeal the negative admissibility decision to the District Court which also reviews the lawfulness of detention. This appeal must be made within 24 hours.¹⁷

In addition, the court is notified of any detention of a rejected asylum seeker for over four weeks that has not been appealed. If deportation is still impossible, through no fault of the alien, the asylum seeker will be released.¹⁸

Are there limits on the period of detention? Yes; four weeks to eleven months.

If an asylum seeker has been rejected for the accelerated procedure, and has been detained for four weeks pending removal without lodging an appeal against the rejection, the District Court is notified. If deportation is not possible, the detainee will likely be released.¹⁹

In practice, depending on the availability of travel documents and the appeals lodged, an asylum seeker may be detained for as long as eleven months pending deportation.

¹⁴ UNHCR EU REPORT 2000, *supra* note **Error! Bookmark not defined.**3, at 129-30, 132.

¹⁵ EUROPEAN COUNCIL ON REFUGEES AND EXILES, COUNTRY REPORTS 2001 at 160-161, *available at* <http://www.ecre.org/publications/countryrpt01.shtml> [hereinafter ECRE REPORT 2001].

¹⁶ Aliens Act § 94 (2000) ; ECRE EUR. STUDY 2001, *supra* note 9, at 217.

¹⁷ DRC W. EUR. REPORT 2000, *supra* note 6, at 204, 209.

¹⁸ UNHCR EU REPORT 2000, *supra* note **Error! Bookmark not defined.**3, at 132-33.

¹⁹ *Id.*

Is there periodic review of detention? No.

There is an automatic review within ten days; further reviews are initiated by the asylum seeker by appeal to the District Court.²⁰

Is there access to government-funded legal aid? Yes.

Asylum applicants under the accelerated procedure receive legal aid appointed from the private bar or the Foundation for Legal Aid in Asylum Cases, which is state-funded.²¹ An asylum applicant in the normal procedure may also have a lawyer or a representative from the Dutch Refugee Council be present at the asylum interview with the IND.²² Asylum seekers appealing negative decisions are appointed state-funded counsel.²³

Vulnerable groups: In 2001, 17% of asylum seekers were unaccompanied minors.²⁴ Unaccompanied minors under 12 are appointed a guardian to file an asylum application on the minor's behalf. Representatives from the Dutch Refugee Council also usually assist and accompany minors at their asylum interview. In some cases, when a case requires legal representation, the Foundation for Legal Assistance appoints a lawyer to represent the child.²⁵ Efforts are made to house unaccompanied minors in special facilities.²⁶ Unaccompanied minors under 15 are accommodated, when feasible, in special centers run by the *Valentijn* Foundation, where the Dutch Refugee Council has an office.

In May 2001, the government announced a more restrictive policy towards unaccompanied minors in response to an increase in the number of minor asylum seekers coming to the Netherlands in recent years.²⁷ Unaccompanied minors whose asylum claims are rejected are granted a revocable residence permit, which is valid for three years. During these three years, the Ministry of Justice examines the family and guardianship situation in the country of origin. If the minor turns 18 before the three-year period has expired, he must return to his country of origin.²⁸ When they are in the

²⁰ Aliens Act § 94 (2000).

²¹ DRC W. EUR. REPORT 2000, *supra* note 6, at 204.

²² UNHCR EU REPORT 2000, *supra* note **Error! Bookmark not defined.**3, at 127.

²³ UNHCR EU REPORT 2000, *supra* note **Error! Bookmark not defined.**3, at 128.

²⁴ ECRE EUR. STUDY 2001, *supra* note 9, at 217.

²⁵ *Id.* at 218.

²⁶ UNHCR EU REPORT 2000, *supra* note **Error! Bookmark not defined.**3, at 131.

²⁷ USCR WORLD REFUGEE SURVEY 2002, *supra* note 5, at 198.

²⁸ ECRE EUR. STUDY 2001, *supra* note 9, at 218; *Asylum Procedure*, *supra* note 5.

Netherlands, unaccompanied minors are under guardianship of the institution called “De Opbouw,” which is responsible for supervision of these youngsters.²⁹

²⁹ *Asylum Procedure, supra* note 5.