

ICT Professionals/Expatriates:

More than Welcome in the Netherlands?

Recent developments regarding the Dutch labor market will make it easier for ICT professionals from outside the European Union (EU) and the European Economic Area (EER) to work in the Netherlands.

Due to the profitable business climate and a sustained economic growth, there is a huge demand for ICT professionals in the Netherlands. The Dutch minister for Social Affairs and Employment recently approved an important change in policy with regard to the work permit application procedure for non-EU/EER ICT professionals.

Yet, actions speak louder than words when it comes to settling in the Netherlands.

ICT in the Netherlands

The Information and Communication Technology industry appears to be an ever-booming business. Since 1990, the market for ICT products has been increasing steadily. The Netherlands successfully claims an ICT gateway position to Europe and large companies such as Worldcom are already located here. The Dutch government has appointed the ICT industry as a major player with regard to the development to a knowledge-based society. However, there is a dark side to all of this. At the moment, the Dutch ICT industry is facing huge staff shortages. Surveys indicate a shortage of up to 18,000 ICT professionals annually. Without appropriate measures, a structural shortage is expected which might seriously damage the economic development and the competitive position of the Netherlands.

A Shortage of Professionals

Last February, the German *Bundeskanzler* Schröder announced at the CeBit in Hanover, the largest European ICT fair, that Germany would open its doors to ICT specialists from outside the realm of the European Union. Especially from countries such as India, thousands of ICT professionals are currently being recruited for German companies. To this end, the German labor and (non-)immigration rules and regulations are being eased considerably. In May of this year, the Dutch Minister for Social Affairs and Employment Mr. Vermeend recognized that the ICT sector was under threat of the continued lack of sufficient numbers of professionals. Therefore an important change to the work permit application procedure was introduced. It is furthermore expected that in October of this year, the Dutch employment law regarding foreigners (*Wet arbeid vreemdelingen*) will be amended and modernized.

Working in the Netherlands

Citizens of the European Union (Belgium, Denmark, Germany, France, Greece, Ireland, Italy, Luxembourg, Finland, the Netherlands, Austria, Portugal, Spain, the United Kingdom and North Ireland, and Sweden) and nationals of Iceland, Liechtenstein and Norway do not need a valid work permit, a *tewerkstellingsvergunning*, before commencement of and during employment in the Netherlands. For the rest of the world's population, the Dutch employer needs to apply for and obtain a work permit in order to legally make use their services in Holland.

The Role of the Dutch Employer

The Dutch employer is responsible for obtaining the work permit, issued by the Central Employment Office of the Netherlands. The permit is valid for a maximum period of three years. Employing certain foreign workers without a work permit is illegal and can lead to heavy fines. It is therefore not recommendable. Before applying for a work permit, the employer normally needs to file the ICT job opening for a period of at least five weeks with the local Employment Office, and with EURES, the European employment organization. These filings are aimed at finding a suitable candidate from the Netherlands and secondly from Europe. Due to the fact that there are simply not enough ICT professionals available in the Netherlands, the Minister of Social Affairs and Employment has recently decided that the listing of (certain) ICT vacancies with local Employment Offices is no longer required. This effectively means less paperwork and costs for the employer, and shorter procedures. A considerable step forward for the Dutch ICT industry. If the candidate has a college degree or higher and the Dutch employer is able to prove that he has genuinely made an effort to recruit from within Europe, the application procedure for a Dutch work permit stands a good chance of success.

Advertising the Job Opening

The Employment Office normally favors a regular 'paper' advertisement

in specialized (computer-)magazines such as *Computable* or in a Dutch national newspaper. Sometimes also recruitment efforts through advertising on the Internet are allowed by the Employment Office. This of course can be seen as another advantage for ICT companies since the Internet is widely used in this sector. Another advantage is that through the Internet, ICT professionals from all over the world can be informed on Dutch job openings. The application for a work permit has to be prepared carefully and minutely. Specialist legal assistance can be helpful in keeping preparation time and delays to a minimum. In that manner an application procedure will normally take five to eight weeks.

Living in the Netherlands

Visa

An authorization for temporary stay, a *machtiging tot voorlopig verblijf* (MVV), is a visa required for travel into the Netherlands, when the period of stay in the Netherlands is to be longer than three months. An MVV can be applied for with a Dutch embassy or consulate – where they often refer to it by the name of ‘authorization for professional sojourn’ – in the foreign national’s country of origin and allows a foreign national to cross the border into the Netherlands. Some foreign nationals do not need an MVV in order to come to Holland and secondly (successfully) apply for a residence permit. Citizens of the EU and citizens of Australia, Canada, Iceland, Japan, Monaco, Liechtenstein, New Zealand, Norway, Switzerland and the United States of America are not required to have an MVV.

Residence Permit

A ‘non-Dutch’ national who intends to stay in the Netherlands for more than three months needs to apply for a residence permit with the Aliens Police of the municipality in which he or she is residing or staying. With some exceptions, a residence permit will only be issued to a foreign worker if he or she

has been issued a work permit by the Central Employment Office. A residence permit can be issued for a period of up to one year. Residence permits can be extended. Different rules apply to EU/EER citizens.

Effort

Both the MVV procedure and the residence permit procedure demand attention and energy from the applicant and beneficiary. If these applications are well-prepared, the entire process will go more smoothly and in that way substantial progress can be gained. Specialist legal help could therefore be useful. From the Netherlands, the MMV application in the country of origin can also be supported through a so-called ‘referent’-procedure. In this procedure the ‘referent’ (kind of agent) provides supporting documentation and information regarding the foreign applicant and beneficiary, directly to the Aliens Police in the Netherlands. In some cases this is highly recommendable.

Long Wait

The MVV procedure can sometimes pose a real problem for the ‘expatriate/ICT professional-to-be’. In 1999, a total of 44,000 MVV’s were applied for. According to current Dutch regulations, the MVV procedure should be finalized within three months. These days the average procedure can take six months or more. During the application period the ICT professional is not allowed to stay in the Netherlands. He or she must remain in the country of origin and await the final result. Regrettably this could mean a long wait. Reasons for the aforementioned delay are diverse. Most of the time, additional proof regarding the application is requested. This certainly applies to applications that are ill-prepared. Furthermore, certain Dutch authorities involved are, at the moment, understaffed. Another reason is that up to four different Dutch organizations are involved in the MVV application process. A lot of

time is lost in sending application files and documents to the next party. The *Immigratie- en Naturalisatiedienst* (IND), (co-)responsible for the MVV proceedings, acknowledges these problems and is working on solutions. The IND aims to efficiently solve the problems regarding processing times through computerization (!), closer cooperation with other parties and harmonization.

Conclusion

On the one hand, the Netherlands has eased the application procedure for a work permit for certain ICT professionals. The filing of the ICT vacancy for a period of five weeks with the local Employment Office is no longer necessary. This has advantages for Dutch (ICT) companies such as shorter procedures, less costs and less paperwork. On the other hand, most of these professionals still need an authorization for temporary stay (MVV) before they can enter the Netherlands and apply for a residence permit. Due to delays and backlogs with the Dutch authorities, a procedure for an MMV can take many months, sometimes up to a year. During that waiting period, the ICT professional is not allowed to be in the Netherlands. Although some improvements have been made and recent developments in the Netherlands are going in the right direction, an optimal situation for the highly needed ICT professional from abroad has still not been reached.

This article is for informative purposes only, is general in nature, and is not intended to be a substitute for competent legal and professional advice. Dutch rules and regulations regarding MVVs, work & residence permits are continuously subject to change. ■

Patrick R. Rovers,
Legal consultant with Van Velzen
C.S. The Netherlands B.V.
E-mail: vvcs.nl@vviworld.net
Web-site:
<http://vviworld.net/vvcs.nl>