

If you could ask something to a lawyer for free what would it be?

Q&A with Jeremy Bierbach

On the 8th of July we held a Q&A via Zoom with Jeremy Bierbach, an attorney based in Amsterdam who specialises in non-asylum immigration to the Netherlands, EU law and the Dutch-American Friendship Treaty. The Zoom call was for non-EU Students, at both the Rietveld and the Sandberg, to field questions about upcoming visa applications and any related questions.

The Q&A was broken down into four main topics, which were the zoekjaar visa, the artist visa and other visas available after the zoekjaar, TOZO and TOFA, and brexit, with the main bulk of the conversation dedicated to the first two of these. We have formulated the questions and answers below into these same topics. Other questions and tips have been collected at the end of the document.

Around 25 students joined for the call, which lasted for an hour and a half. We'd like to thank Jeremy for joining us and the students for their questions. The Q&A was organised by Francisca Khamis, Unsettling and the Sandberg Student Circle.

Zoekjaar (Orientation Year/Search Year Visa)

General information about the zoekjaar given in Jeremy's answers:

The zoekjaar is a year visa that can be obtained after graduating from a Dutch university or higher educational institution, which is designed to give graduates the time and space to set themselves up in the Netherlands after their studies. During this year you are generally able to do whatever you want, you can work, you can become self employed and you can also not work, with the idea that you get ready for the next visa that you want to apply to.

Are there minimum income requirements for the zoekjaar?

No, the only requirements for the zoekjaar are that you have graduated from a Dutch university.

Can a zoekjaar be denied?

If you have graduated and filled in the application then there should be no reason why your zoekjaar application would be denied.

When does the zoekjaar start?

The start date of the zoekjaar is from when you apply for it. If you apply for it in advance of graduating the IND will be notified of your date of graduation and then it starts the next day.

How long before the end of my student visa should I apply?

One week or two weeks before is enough, but further in advance is also fine.

Can I travel while my zoekjaar application is being processed?

This depends on your nationality, it depends on if you have a visa free nationality or visa required nationality. If you don't normally require a visa to enter the Schengen area as a tourist then go ahead, but if you do you would have to ask the IND for a tourist visa. If you travel without this and your application is being processed it could be jeopardised. During the Covid-19 pandemic this is basically not possible as a lot of the travelling restrictions are more stringent and the IND are not offering these tourist visas as normal, however this may change soon.

Can you apply for a zoekjaar after you have graduated and does a period where you are not registered cause a problem for this?

Yes you can apply for a zoekjaar later as long as it is within three years of graduating. Not being registered is not a problem for the zoekjaar application but if your plan is to apply for the Dutch permanent residence permit, which requires that you live in the Netherlands for five consecutive years, if you are not registered, for any period at all, it will restart the five year countdown.

Biometrics; because of the Covid-19 pandemic and Brexit there has been a backlog of biometric tests (something which you need to do once your zoekjaar application is submitted). Is this something to worry about?

Never be stressed out about the biometric tests, firstly it isn't a test and secondly it is not an actual requirement for your right to stay, so the current backlog is nothing to be stressed out about. These can be done later on if necessary.

Can you be hired the same day as you apply for your zoekjaar?

Yes, even if the IND takes it's time dealing with the zoekjaar app, which it shouldn't, the understanding is the the permit is granted retroactively, so it should be fine.

Whilst this isn't directly helpful for the Rietveld and Sandberg Students, Jeremy did mention that the zoekjaar is also available to those who have attended a top university in other countries.

Artist Visa (Self-Employed Residence Permit), Highly Skilled Migrant and Other Visas

Jeremy spoke with us about a number of visas that students usually apply for after their zoekjaar. Specifically we spoke about the self-employed residence permit (often called the artist visa), the highly skilled migrant permit, the scientific research residence permit and being able to reside in the Netherlands because of a spouse with EU citizenship. We also spoke briefly about the Dutch permanent residence permit and the EU permanent residence permit, both are permits available after having been in the country for five years and both allow you to live in the Netherlands for however long you want with much less restrictions than the other visas. There are some small differences between them both.

Artist Visa (Self-Employed Residence Permit)

What is an artist visa?

First of all Jeremy spoke about the importance of understanding what the 'artist visa' actually is, particularly when looking to renew the permit after two year. Its official name is a self-employed residency permit, which is a broad two year visa for entrepreneurs and those who run their own company, however the application process and the criteria for artists is different. The normal self-employed residence permit is actually very difficult to obtain, requiring that the applicant fill a fairly unique economic interest of the Netherlands and puts together a much longer application including a comprehensive business plan, market research, finances and contracts lined up. Artists are exempt from most of this and the IND refers the application to the Ministry of Education, Culture and Science instead of the Ministry of Economic Affairs for consideration. Artists still need to be registered as a business, provide a business plan (albeit a much shorter one), a profit and loss projection and proof that they will be doing culturally significant work via letters from institutions and potentially references. The majority of this application only takes into account things that you have not yet done, what they want to see is that you have work planned for the future and a clear plan for moving forwards.

Does it require an income, a minimum amount?

Not initially. You don't need to earn anything as an artist before the application, instead you need to have a profit and loss projection drawn up by a bookkeeper that explains how you are planning to make around €1300 a month after the start of the residence permit. This can be made in a number of ways; selling work, artist fees for exhibitions, running workshops, acquiring funding, teaching etc. This doesn't necessarily need to be work that is already lined up.

How do you prove that you'll be doing culturally significant work?

This is defined by obtaining invitations from institutions or cultural spaces that are deemed nationally important, and letters of reference from these institutions explicitly stating that they will be working with you in the future.

Jeremy stressed that while letters of reference from important figures or ex-tutors are helpful for padding out your application and showing a degree of professionalism, your application will not be accepted without letters from culturally important institutions committing to work with you in the future. This should always be your main focus.

Jeremy showed us a letter that he felt was the best example that he had seen, which was essentially one paragraph that stated that this artist will be exhibiting with this institution in this exhibition on this date.

What constitutes an institution of national importance?

An institution is defined as being of national importance by where its funding is from. So an institution that gets funding from any of the big national funding bodies qualifies, for example if it gets money from the Mondriaan Fonds or the Netherlands Film Funds. Or if it gets money from

one of the four big city funds, Amsterdam (AFK), Rotterdam (CBK), The Hague (Stroom Den Haag) or Utrecht (Utrecht voor Cultuur).

How many recommendation letters should you have?

Jeremy said that he has seen applications that were successful with one impressive letter, something like a solo exhibition at the Stedelijk. That being said, he spoke about three from institutions being a good number and then you can add any that you get from individuals on top of that.

Does it cost to make the application and do you suggest that we get a lawyer?

The application cost €1.379 and yes a lawyer is very helpful. Jeremy said that he has a 100% success rate on artist visas and would be able to see if an application will be rejected beforehand, saving time, money and hopefully rectifying any problems before it's too late. He's taken on repeal cases before and said that it is clear how easily you could simply misunderstand a particular part of the application, meaning that it ends up being denied.

Is the renewal process after the first two years of the visa the same process?

No. After the two years are up you can apply for another two through a renewal process. For this process they are no longer interested in your cultural significance and instead are exclusively interested in your financial situation as an artist. At this point you need to be able to show that you have earned on average €1300 each month since the start of your artist visa. So it is important to focus on finances over the first two years.

At the end Jeremy added:

It's always in your interest to register your company with the KVK, it's also in your interest to establish a relationship with a bookkeeper, even if you think you can do your taxes on your own. They will know much of what you have to organise for the artist visa and will be able to quickly draw it up for you.

Highly Skilled Migrant Residence Permit

What does highly skilled migrant mean?

The best way to understand this distinction is really to say that it is a highly paid migrant visa, as this is really what the IND is asking for proof of. The standard definition is that you need to be paid €4.700 a month by an employer to qualify for the highly skilled migrant permit.

However there are a number of reductions if you fit into specific circumstances, for example if you are under 30 or a graduate from a Dutch university less than a year ago you can qualify with a lower monthly wage. Jeremy looked up the reduction for those who have graduated less than a year ago and it was €2.423 a month.

Furthermore, there has been a very recent change to these reductions in response to the Covid-19 pandemic (which were announced two days before the Q&A) that extended the period

after graduating that you can qualify for this reduced wage highly skilled migrant visa from one year to three.

Does this new Covid-19 change to the reduction apply if you have graduated less than three years ago?

As the announcement was so new this hadn't been explained yet, so Jeremy wasn't one hundred percent sure. However, his inclination was that it would not take 2020 as the start year and would be available to those who have graduated in the last three year, his reasoning being that the way that the legislation was written it would be easier to just insert the change without specifying when this started.

PhD or Scientific Research Status

Jeremy spoke of a third option open to those who work in the arts, which was to obtain a PhD candidacy or some other research position at a university or a higher education institution. With this option you would not need to make a particular income and this residency permit would allow you to work as much as you want outside of the institution that is sponsoring you.

Would the fellow positions at the Sandberg provide this status?

Jeremy seemed to think that it would as the notion of this status is based on the autonomy of Dutch universities and higher education institutions to decide for themselves who they want to have as a researcher. If the school is willing to say that they have a hosting agreement with you as a researcher and that they were happy to sponsor you, regardless of whether the position was paid, this would be enough to gain scientific research permit. However it does entail a certain level of commitment from the school.

Marriage Visas

There was a question about how marriage visas work and specifically if the student could leave the Netherlands for studies in another EU country while their spouse stayed here, whether this would cause problems further down the line.

When you have a right to stay because of an EU spouse, it's more important what your spouse is doing. If they are staying in the Netherlands then it shouldn't be an issue, however if they left the Netherlands then you no longer have a right to stay. Jeremy also suggested that because this student was planning on doing a masters outside of the Netherlands and their spouse was staying that they should just stay registered at their spouses address, particularly if they were looking to get a permanent residence permit after five years. It would be difficult for the Dutch government to know if you were elsewhere in this situation.

Dutch and EU Permanent Residence Permit

The Dutch and EU permanent residence permits are residence permits that allow you to live in the Netherlands for as long as you like with much less restrictions than the other visas. You can apply for these permits if you have been living in the Netherlands for over five years without any gaps. Predominantly those who have studied in the Netherlands apply for the Dutch permit as it takes into account your years studying and the zoekjaar, while the EU permit takes these into consideration as if they were a reduced period.

The difference between the two is that one is written into Dutch law and the other is written into EU law, there are small differences in the way they work and the way they are obtained but Jeremy said these are minor.

What happens if I leave the Netherlands for a short period or am not able to register somewhere? Is this a problem for the Dutch residence permit?

Yes, if you are not registered somewhere in the Netherlands, whether you are between homes, you've left for a period or you are living somewhere where you cannot register, for any period at all you will lose all of your years and the five year clock will start again. Even if this period is only for one day.

Is a gap also a problem for the EU residence permit?

Yes, but they are slightly more lenient of what actually constitutes a gap. For example if you apply in the Netherlands for your self-employment residency permit and the permit is being processed but you didn't add all the information that is necessary and this hasn't been rectified before the end of your current residence permit this short gap would restart the clock in the Netherlands but it wouldn't for the EU residence permit. So there is not a huge difference but it is slightly more lenient.

If I have studied for two years, then had a zoekjaar and then obtained a self-employed residence permit for another two years, would all of this count for my five years in the country until I can apply for a permanent residence permit?

Yes, this is possible but you will need to line it up well. If you have even a day between the end of your self-employed residence permit and the five year mark you will have to apply for another non-temporary residence permit to carry you over.

There is a myth that student years only count for half a year, this is not the case for the

Dutch permanent residence permit. However this is the case for the EU residence permit, and the zoekjaar doesn't count at all.

TOZO and TOFA

TOZO and TOFA are two Coronavirus specific funds that can be applied for in different situations. TOZO is designed to help ZZP'ers whose self-employed work has dried up because

of the pandemic. It is paid for by the Gemeente and is therefore understood to be a non-contributory benefit. While TOFA is a contributory benefit for flex workers who no longer have hours because of the pandemic, it is a form of socialised unemployment insurance.

Will applications to TOZO cause problems for future self-employment residence permit (artist visa) applications?

When applying for the artist visa, in theory, it won't take into account anything that you have done in the past. The decisions made about this visa are all about the cultural significance and income that you will have in the future, therefore applying to TOZO in your zoekjaar is not a problem.

If I already have a self-employed residence permit, is applying to TOZO a problem?

If you already have a self-employed residence permit there should be no problems applying for TOZO at all.

Should I apply for TOZO if I have become self-employed while also studying on a student visa?

This is risky. As a student your official reason for residence is study and not work, this is why you are asked to prove that you can support your studies by showing savings before the permit is granted. Therefore the IND could use your application for TOZO to revoke the permit, claiming it as proof that you are no longer able to support your primary reason for being in the Netherlands, to study. As TOZO is a Coronavirus specific fund it is still unclear whether this will be the case or not, but it is Jeremy's feeling that it should be avoided if possible.

If I am a student and I have already applied for TOZO when will we find out if it is a problem?

I'm afraid we will probably find this out if/when the IND starts to revoke student residence permits. They might also end up surgically revoking permits, whereby they would allow you to stay in the country but would say that you did not have a permit during the period where you had TOZO. This would simply reset your five year clock for a permanent residence permit, I.E. you would need to wait five years from the end of the time you were on TOZO before you can apply for this permit.

Is TOFA the same in terms of not compromising applications for a visa?

TOFA is actually less dangerous than TOZO, it is a form of unemployment insurance and a contributory benefit, so it is seen as something which you are already contributing to and therefore something that you should always have access to if you need it.

Can I apply to TOFA as a student?

Yes, if you are a student or on your zoekjaar and you had regular hours before the start of the pandemic, you should be able to apply for TOFA.

Brexit

What is the temporary residence permit?

The name for this permit is very misleading, in the withdrawal agreement between the UK and the EU there is no use of the term temporary. You are either applying for a residence permit or a permanent residence permit. The residence permit is designed to get you up to the five year point, at which time you can apply for a Dutch permanent residence permit. During this time British citizens will be treated by the Netherlands as if they were still EU citizens.

Are there any financial conditions for the temporary residence application?

Not exactly. To quote Jeremy directly, what the withdrawal agreement says is 'as long as you live in a host country as a British citizen before December 31st 2020 the idea is that you will continue to be treated the exact same way as you were treated when you were an EU citizen'. Jeremy said that much of what he has been doing when talking to British citizens is explaining what their rights as EU citizens have been. These rights are very strong and are not meant to be understood in financial terms at all, instead to continue living in the Netherlands you are simply meant to be making full use of one of those rights to stay, the two useful examples here are to study and to work.

If you are studying you can get a residence permit. The same is the case if you are employed, run a business or are self employed and either earn €800 a month or work 16 hrs a week. If these things are not the case then they may ask you for more information about how you support yourself within the Netherlands. However, Jeremy was confident that very few of those who apply will be asked to leave and if this were it would be because they were already not fulfilling the conditions that they needed to fulfil to be in the Netherlands as an EU citizen.

Does a no-deal brexit change any of this?

No, because the Dutch government has unconditionally committed to obeying the withdrawal agreement, even if the UK does not hold up its side of it.

Other Questions

Non-EU students have limited capacity to work, even for horeca they need a work permit that often employers don't want to apply for, what can an Non-EU student legally do to make change upon this topic, is it somehow possible to appeal to the Tweede Kammer personally? (This question also prompted a discussion about the work permit which we've included here)

The student work permit is actually easy for employers to fill out, so they shouldn't really have much of an excuse not too. A normal work permit is a massive hassle but for students it's much easier, this might explain any reticence from employers. The employer does have to fill it out, but it's granted for students almost automatically. However, if they don't want to do this it's very difficult to force them.

It's unlikely that the Tweede Kammer would change the laws about non-EU student work permits, because they expect non-EU students to be able to support themselves without the extra work. This is written into the requirements for the non-EU student residence permit and is the reason that non-EU students have to prove that they have the resources or support to study. The work permit has been considered as a way that the students can earn a little on the side to top up their savings or to give them some extra money. So Jeremy felt that this changing anytime soon would be unlikely without political pressure.

Does the work permit cost anything for either you or your employer?

No, it's free.

Jeremy finished by adding a couple of quick bits of information that could be useful:

Right to work in the Netherlands as a non-EU student has the same conditions even if you're not working for money, so if you exceed your work permit hours as a volunteer you could also have your student residency permit revoked.

Turkish citizens have special rights based on a treaty between the Turkish government and the EU, whereby if Turkish citizens can prove they've been legally working in the Netherlands for one year at the same company then they can get an automatic work permit to continue working for the same company.

The date that it says the residency permit is expiring, on that day it is too late, everything needs to be sorted by that date.

Moving Forwards

We would like to build on this document in the future, so we would like you to add any other questions you have below? Anything you would want clarified? We will not be able to have these questions answered immediately, so if you need answers now we do suggest that you look elsewhere but would appreciate it if you also share any information that you get hold of, to help others in the future.

Please add any new or follow up questions below:

Question - Is there any consequence of "Briefadres"?

Above Q&A speaks about what happens when someone is not registered at any municipality in the Netherlands, which says it will stop counting the five year period for permanent residency application.

Would it be also the same case for someone registered at a letter address? Letter address could be used as a solution for people without home or between homes. It is getting hard to find affordable home where someone can be registered, so I see some people are using letter address. It would be good to understand the consequence of letter address.

Q: How does the partnership visa works if you are a student at the rietveld and want your partner to stay with you until the end of your studies? (EU student - Non-EU Partner, self employed currently under the zoekjaar visa, ending November 2020)