



EILANDGEBIED ST. MAARTEN NEDERLANDSE ANTILLEN

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No. 37

PUBLICATION SHEET OF THE ISLAND TERRITORY OF SINT MAARTEN

ISLAND RESOLUTION entailing general measures dated June 10th, 2008, in execution of articles

- 3, part e
- 5, third and fourth paragraph and
- 8, first section, part f and second section

of the Federal Ordinance on Employment of Foreign Labor (F. P.S. 2001, No. 82) (“Island Resolution on Employment of Foreign Labor”)

THE EXECUTIVE COUNCIL OF THE ISLAND TERRITORY OF SINT MAARTEN

Considering that for the execution of articles

- 3, part e
- 5, third and fourth paragraph and
- 8, first section, part f and second section

of the Federal Ordinance on Employment of Foreign Labor (Federal Publication Sheet 2001, No. 82) it is necessary to set rules and regulations regarding the employment of foreigners;

RESOLVES:

To establish the following Island Resolution, entailing general measures.

Article 1 (definitions)

In this resolution and the stipulations based thereon, the following is understood by:

- Federal Ordinance: The Federal Ordinance on the Employment of Foreign Labor ;
- The Island Territory: The Island Territory of Sint Maarten ;
- The Executive Council: The Executive Council of the Island Territory of Sint Maarten ;
- The employer: 1^o. the person who, by executing his profession or owning a Company has another person in his employ; 2^o . a natural person who has another person doing household or personal services ;

- Employment permit: the permit that the employer must request from the Executive Council in order to employ a foreigner ;
- Request: the request for a employment permit ;
- Request for renewal: request for the renewal of a employment permit ;
- Residence permit: the permit for temporary residence or residence as meant in article 6, first section, of the Federal Ordinance on Admittance and Expulsion (P.S. 1966, No. 17, as amended) ;
- Foreigner: a person who, based on the stipulations of the Federal Ordinance on Admission and Expulsion, is either legally entitled to reside in the Netherlands Antilles or who needs a residence permit to stay in the Netherlands Antilles ;
- Counterpart: a local worker, who is put to work alongside the foreign worker by the employer, and who has the potential to be trained by the employer so that within a maximum period of three years, he is capable of taking over the function of the foreign worker ;
- The Department: The Department of Welfare and Labour ;
- The Head: the head of the Department of Welfare and Labour ;
- The Advisory Committee: the Committee instituted by the Executive Council, charged with handling the appeals submitted based on article 12 of the Federal Ordinance ;
- Establishment Regulation: ordinance on the establishing of companies ;
- the Inspectorate: The Inspectorate of Taxes ;
- Acculturation Examination: an examination to be taken by the relevant foreigner within four months after the employment permit is granted for the first time, and whereby the foreigner is tested on his knowledge of the language of Sint Maarten, the history and culture of Sint Maarten, its cultural and social values, knowledge of the economy in general and of, in particular, Sint Maarten's tourist product, knowledge of its Government and the persons in said Government.

Article 2 (submitting a request)

1. A request is submitted by the employer to an official appointed thereto by the Department. The employer can have the request submitted and further handled on his behalf by a representative given power of attorney by him, and who is not the foreigner himself.
2. Upon submitting the request, the employer will be given a written and dated receipt.
3. When an employer files a job vacancy, based on article 5, section 5, sub c of the Federal Ordinance, he will receive a written and dated receipt. When submitting the notice of a job vacancy, or if he so requests at any time before that, the employer will receive a copy of the Federal Ordinance and a copy of this resolution with elucidation. When giving notice of a job vacancy, the employer will also have to sign a written statement, indicating that he has received the relevant rules and regulations and that he has a thorough knowledge of the contents thereof.

Article 3
(providing data, documents and information)

1. When submitting the request, the employer must provide the following information:
 - a. name, address, telephone number and fax number, or e-mail address, of the employer, and his general registration number with the Inspectorate ;
 - b. name, given names, birth place and date, nationality and civil state of the foreigner in question ;
 - c. the address of the foreigner ;
 - d. nature of the work and the place where the work will be executed by the foreigner ;
 - e. the qualifications, diplomas, certificates and experience necessary to execute the work ;
 - f. information regarding the intended local housing of the foreigner, in particular the address, the location, the area and type of residence ;
 - g. a justified motivation for the need to attract the foreigner for the work to be executed.

2. Together with the request, the employer must submit the following documents:
 - a. a copy of the employment agreement that will be signed with the foreigner, a profile sketch of the function and the total number of positions, existing and projected, if possible, of the employer's business, which will also show where exactly the function fits in the organization ;
 - b. receipt for the fees owed based on article 4 ;
 - c. if applicable, a copy of the business license of the company of the employer, as meant in the Establishment Regulation ;
 - d. a copy of the pages of the passport of the foreigner, which are relevant for establishing his identity ;
 - e. a passport picture showing a good likeness of the foreigner ;
 - f. copies of the diplomas and certificates obtained by the foreigner and also proof of his qualifications and experience, as meant in the first section under e ;
 - g. proof of notification of the availability of the vacancy, meant in article 5, fifth section, sub c of the Federal Ordinance ;
 - h. proof that the employer, in cooperation with the Department, has made sufficient effort to fill the vacancy with workers available on the local market, all this considering the stipulations in article 9, section of the Federal Ordinance. This proof consists of one or more advertisements regarding the availability of the vacancy, drafted in consultation and cooperation with the Department, and published in one or more local newspapers during the period of the vacancy notice. In the advertisement it must be explicitly stated that letters of application must be submitted directly to the Department and that a copy must be submitted to the employer ;
 - i. in case of a request for renewal: proof that the foreigner has passed the acculturation examination meant in article 12 ;

- j. If it is a first request: either a written statement by the employer that at the moment of the submission of the request, the foreigner resides outside of the Netherlands Antilles and that said foreigner intends to stay there during the entire processing of the request, or a statement of positive intent for the foreigner, given by the Governor, if the foreigner is already residing on the island.
3. If so requested by an official of the Department, the employer will let the official inspect the original copies of the diplomas and certificates meant in the first section, sub e, or if they are copies, they must be authenticated by the competent authorities of the country in which they were issued.
4. If so requested, the employer will provide the additional information deemed necessary by the Department official or the Executive Council for the processing of the request. Included in this additional information is the existing or projected company turnover in relation to the total wage costs.
5. If the information requested in the above section is not provided, the proof meant in the second section is not submitted, the cooperation mentioned in the third section is not forthcoming or the information meant in section 4 is not given, the request will not be processed.
6. Neither will the request be processed if the employment agreement mentioned in the second section under a. contains one or more stipulations which are in contravention of a Federal Resolution or an Island Resolution entailing general measures.
7. Neither will a request be processed if it concerns a foreigner for whom an employment permit was already requested but rejected, unless a determined period of time has passed after the first request was rejected; that period of time is one year if all the legal appeal possibilities regarding the first request have been exhausted. That period of time is three years if, with regard to the former request, not all legal appeal possibilities have been exhausted.
8. Neither will a request be handled if there is a strong assumption, or proof, that the employer, when making the request, acted against public order or good morals.

Article 4 (the fee)

1. In order for the request to be processed, the employer must pay to the Island Territory:
 - a. in the event of an employee in a management position: a fee of ANG 3.000,00 if the employment permit is granted for the period of one year or less, ANG 5.400,00 if the employment permit is granted for a maximum of two years but for more than one year, and ANG 7.500,00 if the employment permit is granted for a period of a maximum of three years but for more than two years ;

- b. In other cases: a fee of ANG 1.600,00 if the employment permit is granted for the period of one year or less, ANG 2.800,00 if the employment permit is granted for a maximum of two years but for more than one year, and ANG 3.900,00 if the employment permit is granted for a maximum of three years but for more two years.
2. When submitting the request, proof of payment as if the permit were granted for one year, must also be submitted. If the employment permit is granted for more than one year, the pertinent decree will only be handed over to the employer after the balance of the required fee has been paid.
3. The fee must be paid by deposit on the bank account of the Island Receiver, or by check or cash paid at the offices of the Island Receiver.

Article 5 (exemption)

1. The prohibition meant in article 2 of the Federal Ordinance is not applicable to a foreigner:
 - a. who will be employed as a gardener or a housekeeper working less than sixteen (16) hours a week as meant in article 1, section b, sub 2° of the Federal Ordinance ;
 - b. who performs duties as a board member or as a managing director of a company, while in possession of the relevant permits in the sense of the Establishment Regulations, providing that the foreigner does not intend to actually reside in the Island Territory.
2. Neither is the prohibition meant in article 2 of the Federal Ordinance applicable to a foreigner:
 - a. who is in possession of an indefinite residence permit for the Netherlands Antilles,
 - b. who is married to a Dutch citizen,
 - c. who, before he became an adult, had his main residence on the Island Territory for at least five consecutive years, based on a residence permit with residence by a parent or a guardian, or
 - d. who is a Dutch citizen but was not born in the Netherlands Antilles.
3. Deviation from article 8, first section, in the heading and section a of the Federal Ordinance, is permitted if the work is being done as part of an internship training:
 - a. with a maximum duration of three months, or
 - b. as part of a training program of an institution established in the Island Territory.

Article 6 (specialization, professionalism, moratorium)

1. An employment permit will be denied if it regards a non-specialized occupation, or if it regards work that can be carried out by marginally educated or unskilled workers. The following professions fall within this category:
 - a. Cleaner ;
 - b. Dishwasher ;
 - c. Car washer ;
 - d. Labourer ;
 - e. Driver ;
 - f. Helper ;
 - g. Kitchen helper ;
 - h. Busboy / busgirl.

2. Unless exceptional circumstances can be proven, an employment permit will be denied if the work in question regards a specialized occupation for which the supply already exceeds the demand. The following professions fall under this category:
 - a. Security Officer ;
 - b. Hairdresser ;
 - c. Barber ;
 - d. Shop clerk ;
 - e. Mason ;
 - f. Carpenter ;
 - g. Casino dealer ;
 - h. Administrative worker ;
 - i. Accounting assistant ;
 - j. Receptionist ;
 - k. Telephone operator ;
 - l. OPC ;
 - m. Mechanic ;
 - n. Maintenance man ;
 - o. Gardener.

3. An employment permit will further be denied if the employer did not prove that the foreigner possesses the qualifications, diplomas, certificates or experience which, according to information given by the employer, are required to perform the work.

4. An employment permit may be denied if, according to information given by the employer, the diplomas, certificates, experience, when offset by the nature and weight of the work, are deemed obviously unreasonable.

Article 7

(maximum duration of the employment permit)

1. In principle, an employment permit is granted for only one year at a time, with the possibility of renewal in principle each time for one year, with the understanding

that the total validity of the employment permit, including renewals, may not exceed three years.

2. Upon expiration of the employment permit, the employer will not qualify for an employment permit for the foreigner in question, until the latter has again resided outside of the Netherlands Antilles for the period of at least one year. If, upon expiration of the employment permit, the employer is of the opinion that he has to have the position filled consecutively by a foreigner, he will have to request an employment permit for a different foreigner.
3. In cases of highly specialized occupations, the Executive Council may make an exception to the stipulations established in the first and second section. The Executive Council reserves the right to decide, on a case by case basis, whether one can speak of a highly specialized occupation.
4. For special categories of foreigners a short term, one time employment permit is granted, and such as follows:
 - i) Adult entertainers: for a period of six months, without the possibility of renewal ;
 - ii) Construction professionals: for the duration of the project in question with the possibility of one renewal.
5. The stipulations of the second section are also valid for the category of foreigners meant in the fourth section.

Article 8 (age)

An employment permit will be denied if the foreigner, on the date of the submission of the request, has not yet reached the age of 25, or has already reached the age of 57.

Article 9 (quota)

1. Per business sector quota are set regarding the maximum number of foreigners that the employer is allowed to have in his employ. These quota are as follows:
 - a. Processing industry: 40% ;
 - b. Electricity and gas industry: 5% ;
 - c. Construction: 60% ;
 - d. Wholesale and retail: 25% ;
 - e. Hotels and restaurants: 40% ;
 - f. Transportation, storage and communication: 10% ;
 - g. Banking and financial services: 5% ;
 - h. Real estate and brokerage: 25% ;
 - i. Public service and Defense: 5% ;
 - j. Education: 30% ;

- k. Public Health and Social Work: 10% ;
 - l. Other public and social services:10%.
2. An employment permit will be denied, if granting of the employment permit would lead to the quota for that business sector being exceeded within the establishment of that employer.

Article 10
(counterpart)

- 1. An employment permit will be denied if the employer refuses to appoint a counterpart deemed suitable by the Department and provided to the employer by the Department.
- 2. A request for renewal will be denied if it is apparent that the employer dismissed the counterpart in question without prior permission from the Department or if the training of the counterpart was not sufficiently taken in hand by the employer, such according to the discretion of the Department.
- 3. The training of the counterpart may take at most three years. The costs for the training of the counterpart are for the account of the employer.

Article 11
(housing)

- 1. An employment permit will be denied or retracted if it is apparent that the employer has not provided adequate housing for the foreigner, as judged by the Department. When verifying the aforementioned, the Department will take at least the following criteria into consideration: The accommodation must comply with the local building codes, among which are those pertaining to sanitary provisions, it must be lawfully connected to the electricity and water distribution network and it must have an average of at least 25m² living space per person.
- 2. A request for renewal will be denied if it is apparent that, in the period preceding the request for renewal, the employer did not provide adequate housing for the foreigner.

Article 12
(acculturation)

- 1. An employment permit will be retracted if it is evident that the foreigner has not passed the acculturation examination, within four months after the employment permit was first issued.
- 2. A request for renewal will not be processed or will be denied if the foreigner, preceding the request for renewal, did not pass the acculturation examination.

3. Costs incurred for taking the acculturation examination and for following an acculturation course are for the account of the employer.
4. The stipulations in the first, second and third sections are not applicable to the category adult entertainer, neither to foreigners who have successfully completed their secondary education in the Island Territory.

Article 13

(payment of social premiums and wage tax; medical insurance)

1. An employment permit will be denied or retracted, if it is evident that the employer did not pay the social premiums, wage and income taxes imposed by Government, based on the salary stated in the request. An employment permit will also be denied or retracted if it is evident that the employer did not provide adequate medical insurance for the foreigner.
2. A request for renewal will be denied if it is evident that the employer did not pay the social premiums and wage taxes mentioned in the first section in the period preceding the submission of the request for renewal, that the foreigner was not registered with the Inspectorate or if the foreigner was not adequately medically insured.

Article 14

(prohibition to change function or employer)

1. A request for renewal will be denied if it is evident that the foreigner in question is going to fill a different position by the employer. In such a case the employment permit, in as far as it is still valid, will be retracted.
2. An employment permit will be denied if it has been shown that for the foreigner in question a previous employment permit was granted to another employer, whereby between the intended commencement period of the work and the moment on which the former employment was ended, one year will not have elapsed and, during that period of time, the foreigner did not reside continuously outside of the Island Territory.

Artikel 15

(residence permit)

1. When it regards a first request the employment permit will not be handed over to the employer until after the employer has shown proof that he has requested a residence permit for the foreigner.

2. When it concerns a renewal, the employment permit will be denied if it is clear that the foreigner was not in possession of a residence permit in the period preceding the submission of the request.

Article 16
(function relative to the organizational plan)

An employment permit will be denied if, according to the motivated judgment of the Department, the function does not correspond with the organizational plan submitted by the employer in accordance with article 3, first section, sub a, or if the function cannot be reconciled with the nature of the company of the employer.

Article 17
(wage costs in relation to business turnover)

An employment permit may be denied if, in the motivated judgment of the Department, there is an unfavorable relation between the turnover of the business of the employer, as meant in article 3, section four, and the total wage costs of the employer.

Article 18
(public order, good morals)

An employment permit may be denied if there is a strong suspicion, or if there is firm proof, that the employer, when submitting the request, handled or has handled contrary to public order or good morals.

Article 19
(the decree)

1. The decree by which the employment permit is granted or denied, will be sent to the employer by fax or by e-mail. In exceptional cases, the decree will be sent to the employer by registered mail or will be handed to the employer personally. In the latter case the employer will have to sign for receipt.
2. If the employment permit is granted, the decree will always make mention of the fact that issuance of the employment permit does not mean that the conditions of the Federal Ordinance of Admission and Expulsion have been met, in as far as it concerns obtaining a residence permit for the foreigner. The decree will also always mention the grounds for retraction and the duty of the employer to report any grounds for retraction of the employment permit as meant in article 10 of the Federal Ordinance, to wit: a. knowledge of incorrect or incomplete data that would have possibly lead to a different decision on the request, b. denial or retraction of the residence permit of the foreigner, c. dismissal of the foreigner, or d. bankruptcy of the employer.

3. Further, the decision will be motivated as much as possible. The decision will always contain the legal clause regarding the possibility of submission of an appeal based on article 12 of the Federal Ordinance.
4. A copy of the decree, along with a copy of the Federal Ordinance and a copy of this Island Resolution with Elucidation will also be given to the foreigner, in as far as the latter has already been granted a temporary residence permit for Sint Maarten.

Article 20 (supervision)

Upon the request of the official of the Department, the employer, and also the foreigner, is obligated to cooperate in establishing whether the conditions for the validity of the employment permit have been met, among which:

- a. that the business of the employer is actually operating ;
- b. that the foreigner is really working for the employer in the position for which the employment permit was granted ;
- c. that the employer really appointed a counterpart and that the latter is being adequately trained ;
- d. that the employer respects the quota for that particular business ;
- e. that the foreigner has passed the acculturation examination ;
- f. that the employer has indeed provided adequate housing for the foreigner ;
- g. that the foreigner is not younger than the minimum age or older than the maximum age ;
- h. that the employer has paid the social premiums and wage taxes owed on behalf of the foreigner, that he has taken out a medical insurance for the foreigner and that he has made sure that the foreigner is registered with the Inspection ;
- i. that the employer has actually requested a residence permit for the foreigner.

Article 21 (mandate decision)

1. The authority to decide on a request is mandated to the Head.
2. The authority to decide on an appeal submitted based on article 12 of the Federal Ordinance, is mandated to the Advisory Committee, in as far as the position of the Advisory Committee is to uphold the decision against which an objection has been filed.
3. When carrying out the mandate mentioned in the first and second section, respectively the Head and the Advisory Committee will, within one month of decision making, send a copy of all decisions taken to the Executive Council, accompanied by the relevant advices and the supporting documents.

Article 22
(effectiveness)

This island resolution, with the exception of article 4, first section, goes into effect, two months after the day of promulgation. Article 4, first section, goes into effect four months after the day of promulgation. At the same time this island resolution goes into effect, the island resolution entailing general measures, established on January 21, 2003 (P.S. 2003, No. 6) will be retracted.

Artikel 23
(transition)

1. As of the date that this Island Resolution goes into effect, a request for renewal will be considered as a first request, in as far as the renewal will be granted for no more than three years. If, with regard to a certain foreigner, the employment permit, including renewals, at the time that this Island Resolution goes into effect, had been granted for five or more consecutive years, the Executive Council can decide not to limit the renewal to the maximum of three years.
2. The quota mentioned in article 9 will take effect three years after the date of promulgation.

Artikel 24
(official title)

This Island Resolution will be referred to as: Island Resolution on Employment of Foreign Labor.

Thus established in the meeting of June 10th, 2008.

THE EXECUTIVE COUNCIL OF THE ISLAND TERRITORY OF SINT
MAARTEN,

The Secretary,

The Governor,

This Island Resolution entailing general measures was promulgated by me on this 12th day of November, 2008.

The Governor,