



OMBUDSMAN

SINT MAARTEN

Notice of Termination Investigation
(Article 17 sub 3 National Ordinance Ombudsman)

Immigration and Naturalization Service
Department Head
Philipsburg
St. Maarten

Philipsburg, September 19, 2013

Your ref.no.:
Our ref.no.: OM-OBM 0376/2013

Your letter of:
Complaint no.: 2012/0038

Department Head,

You are hereby informed that the Ombudsman in accordance with article 17 of the National Ordinance Ombudsman (“Landsverordening Ombudsman AB 2010 GT no. 20”) refrains from further investigation of the complaint of (“Complainant”) with complaint number 0038/2012.

Summary of Complaint

On December 30, 2010 Complainant applied for a residence permit under the Extension Temporary Residence Brooks Tower (hereinafter: the ‘application’). Complainant also paid for a work permit in the amount of Nafl. 1,600.- in connection with the request for the residence permit.

On July 16, 2012 Complainant sent a letter to the Minister of Justice with the request to decide on the application for the extension of her temporary residence permit. To date no decision has been received.

Findings

On December 30, 2010 Complainant filed her application to the Immigration and Naturalization Service.

On July 16, 2012 Complainant sent a letter to the Minister of Justice with the request to provide her with a decision on the aforementioned application as soon as possible.

Since no response from the Ministry of Justice was received, Complainant filed a Complaint against the Ministry of Justice at the Ombudsman on August 27, 2012.



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On September 25, 2012 the Bureau Ombudsman sent a Notification of Complaint (hereinafter 'NOC') to the Ministry of Justice.

On October 23, 2012 the Immigration and Naturalization Service replied on the NOC and provided the Bureau Ombudsman with a letter dated October 19, 2012 from the Immigration and Naturalization Service to Complainant. This letter stipulated as follows:

- Due to a criminal investigation the Brooks Tower project was placed on hold by the Public Prosecutor in January 2011;
- Complainant paid the processing fees for her application. For the reason of aforementioned criminal investigation Complainant did not receive a work permit under the Brooks Tower;
- Since October 2011 the Labor Department has resumed the process of applications for work permits for the year 2012. On October 1, 2012 employers were informed by the media to apply for the work permit of their employees; and
- The employer of Complainant needs to submit an application for extension for the work permit at the Labor Department. With a copy of this application Complainant can submit an application for a residence permit at the Immigration and Naturalization Service. As soon as the work permit is issued, the residence permit will be granted.

On May 2, 2013 the Bureau Ombudsman sent the Preliminary Findings to the Immigration and Naturalization Service. The Immigration and Naturalization Service was requested to inform the Ombudsman within two (2) weeks of the date of the Preliminary Findings by indicating whether it agrees with the findings.

By letter dated June 27, 2013 the Immigration and Naturalization Service responded to the Preliminary Finding as follows:

- The citizens were informed via the local media that the handling of applications under the Brooks Tower was placed on hold. Also the resumption was communicated through the media. Citizens were also able to visit the Immigration and Naturalization Service in order to obtain information about the shutdown;
- The letter dated July 16, 2012 of Complainant was received by the Immigration and Naturalization Service on September 30, 2012. By letter dated October 19, 2012 the Immigration and Naturalization Service responded to this letter;
- In October 2011 the handling of applications of residence permits for the year 2012 was resumed. Due to the time lapse it was no longer possible to issue residence permits for the year 2011 (the expiry date was November 3, 2011);
- Complainant has no deficit of residence (in Dutch: "verblijfsgat") since Complainant did not built rights of residence (in Dutch: "verblijfsrecht") before the year 2011.
- Based on the above the Immigration and Naturalization Service cannot agree with the Preliminary Findings .



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Standard of proper conduct

The standard of proper conduct of '*active and adequate information provision*' is applicable in this case and implies on the one hand that administrative bodies have to provide information on demand, but also that they are obliged to provide information on their own initiative when certain actions of the administration will influence the interest of the citizen. This means that they have to act pro-actively.

When it is not possible to give information straight away a term should be given within which the information will be provided, and when it appears that more time is needed the administration should inform the citizen about this on its own initiative and explain why.

The standard of proper conduct of '*promptness*' is also applicable. A government body is expected to observe the deadlines provided for by law. If no deadlines are specified, the governing body must act within a 'reasonable' period to come to a decision. The interpretation of a 'reasonable' time depends on the facts and circumstances.

The standard of proper conduct of '*active and adequate information provision*' means in this situation that government should have confirmed receipt of Complainant's request.

Government should have also informed the Complainant of a possible delay in regard to responding, to her request. As a result of not being informed of receipt of her request and a possible delay in responding the Complainant is under the impression that her complaint is not being taken seriously.

The standard of proper conduct of '*promptness*' means in this situation that the Minister of Justice, in accordance with the 'Instruction to the Governors', should have decided on Complainant's application as soon as possible, however within four (4) months after the application, thus before April 30, 2011. If circumstances arose that frustrated the decision making process and the handling of applications is resumed, the requirement of '*promptness*' is still applicable. The decision period is suspended only for the period that the stoppage was in place. Meaning that after resuming the handling of applications a decision must be taken within the time provided for by law provided.

Conclusion

By letter of October 19, 2012 Complainant was informed that her employer should urgently request a work permit at the Labor Department, after which a residence permit would be granted. Whether the Labor Department indeed rejected the work permit could not be established.



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Complainant did not react to the response of the Immigration and Naturalization Service forwarded to her for a reaction. As such the Ombudsman concludes that the facts are inconclusive. Considering that Complainant did not respond to the reaction of the Immigration and Naturalization Service, the Ombudsman concludes that there is no further interest to pursue the investigation. The Ombudsman therefore refrains from further investigation and will close the file.

Sincerely,

Dr.R. (Nilda) J.A. Arduin
Ombudsman