

Summary

The tip of the iceberg?

Advisory report on combating identity and document fraud in the immigration system

Fraud occurs in a variety of forms in almost all sectors of society. This report is concerned with identity and document fraud in the immigration system (i.e. all the bodies responsible for implementing immigration policy). The ACVZ (Advisory Committee on Migration Affairs) defines identity and document fraud as:

Falsification or deception perpetrated by an alien with existing or fake identity data or documents, with the aim of obtaining advantage or reducing disadvantage and, more specifically, of obtaining access to rights and benefits in the immigration system.

Legal framework

Provisions relating to fraud in national and European legislation

The concepts of identity and document fraud do not appear in Dutch criminal, aliens and nationality law. The criminal law defines a variety of forms of fraud as “forgery”, while nationality law speaks of “false statements or deception”. Both fields of law focus on the intentional nature of the act. Aliens law, on the other hand, speaks of “providing incorrect information or failing to disclose information which might have led to the rejection of the application”. The question of whether this is done intentionally is not at issue here. The fraud provisions in aliens law aim to restore the situation to the one which would have existed if no incorrect information had been supplied or relevant information kept back. The European legislation on admission and residence of aliens also uses a variety of terms referring to fraudulent acts. The concepts they embody are in general not explained.

Legal safeguards with regard to measures to prevent and combat identity and document fraud

The storage and processing of personal data in databases forms a major instrument in preventing and combating fraud. The systematic collection and storage of identity data are subject to certain legal safeguards. These safeguards are laid down in European refugee, migration and data protection law and in national administrative law, or can be derived from them through case law.

Every national or European data system has to be based on a solid evaluation of the interests at stake, one that determines whether collection and storage is necessary to achieve the envisaged goal. This is particularly true in the case of biometrics. The authorities must also closely monitor the relevance, accuracy and security of the stored data and whether it is up-to-date, while individuals must have the right to be informed of the storage of such data, to inspect and correct it, and if necessary have it removed from the files.

Decision-making concerning the admission and residence of EU citizens and their relatives from third countries may not be exclusively based on information held in databases. The administrative authority concerned is obliged to collect further information regarding relevant facts and the interests to be weighed.

Finally, the principle of protection of legitimate interests has to be taken into account when using shared databases within the immigration system. This means that aliens need

to be confident that when their identity is established by an administrative authority, another administrative authority will not question that identity, unless new facts and circumstances have come to light which justify such doubts.

Survey

The ACVZ has conducted a survey into identity and document fraud in the procedures that aliens must complete to obtain admission to and residence in the Netherlands. There are four main procedures:

- applications for admission to the Netherlands; here the responsible and implementing bodies are the Ministry of Foreign Affairs and the Immigration and Naturalisation Service (IND);
- applications for admission at the border; here the responsible authority is the Ministry of Justice, the implementing body the Royal Military and Border Police (KMar);
- applications for registration in the Municipal Personal Records Database (GBA); the responsible authority is the Ministry of the Interior and Kingdom Relations, the implementing bodies are the municipalities;
- applications for residence and continued residence in the Netherlands; here the Ministry of Justice is the responsible authority and the IND the implementing body.

Fraud in applications for admission to the Netherlands

The diplomatic missions are confronted with identity and document fraud in visa application procedures. The majority of missions surveyed feel that this problem receives insufficient attention. It is difficult to establish how extensive the problem actually is because fraudulent activity is not recorded. Nevertheless, figures supplied by the Ministry of Foreign Affairs show that less than 1% of short-stay visa applications are rejected because of the use of falsified or forged documents. How many long-stay visa applications are rejected on these grounds is unknown.

The missions identify problems that hinder efforts to combat fraud. First, almost all the missions feel that access to data systems enabling them to verify the authenticity of documents is insufficient. Second, many of them lack the right contacts with local authorities. Such contacts are vital to the rapid and efficient verification of breeder documents. Third, there is no legal basis for retaining foreign breeder documents, while it is precisely these documents that are the most susceptible to fraud.

Fraud in applications for admission at the border

Every year, KMar refuses to admit several thousands of aliens to the Netherlands at the border control posts. A few hundred of these are turned away because the documents they submit are falsified or forged. According to KMar's Identity and Document Fraud Expertise Centre (ECID), there is not enough insight into the extent of such fraud in the immigration system. Such insight is vital to reliable trend analyses and the adoption of an efficient approach to tackling fraud. The ECID believes that too many bodies are involved and that there is a lack of overall management.

Fraud in registrations in the GBA

An experts meeting held with GBA specialists from a number of municipalities revealed that in the large municipalities, around fifteen to twenty aliens are caught every year in an attempt to register in the GBA through fraud. One large municipality with an active approach to combating fraud discovers one or two cases of identity and document fraud

every week. At other municipalities this figure ranges from several times a year to once a month. Because in general refusals to register applicants are not recorded, there is no national overview.

Most instances of fraud involve authentic identity documents issued on the basis of falsified or forged breeder documents. According to the municipalities, such fraud is perpetrated on an organised basis.

The municipalities perceive a lack of coordination and support from central government. Most of their staff feel they are not properly equipped to identify fraud. There is too little investment in expertise and equipment. What also happens is that through pressure of time or political pressure, aliens are registered in the GBA despite doubts about their identity or the accuracy of breeder documents. Small and medium-sized municipalities have made no specific agreements with the Aliens Police on making a criminal complaint. Many say this is a laborious process that produces few results: according to them, 95% of such complaints are not prosecuted. The problems identified have led to concerns among many staff about the integrity of document processes in immigration procedures in the Netherlands.

Fraud in applications for residence in the Netherlands

Regular applications for residence must be submitted to one of the nine regional IND offices. Most of these see identity and document fraud as a problem which is being tackled adequately. The offices have identified and recorded an increasing number of instances of fraud every year since they opened in 2007 (one case in 2007, 22 in the first six months of 2009). Foreign breeder documents top the list of falsified or forged documents. In a maximum of 1% of cases where the IND refuses to issue or extend residence permits or withdraws them, the reason is the submission of incorrect information or failure to disclose relevant information. A similar percentage obtains in cases of refusal to grant asylum and naturalisation applications, while 10% of withdrawals of asylum status or naturalisation decrees are based on these grounds. Like the municipal GBA officials, IND staff are confronted with tight deadlines for completion of application procedures and limited financial leeway. According to some respondents, the desire for speedy processing and the wide range of duties are incompatible with fraud-proof procedures. Other problems identified include patchy and fragmented registration of fraudulent acts and poor feedback from the Aliens Police regarding criminal complaints.

Conclusion

Nature and extent

Identity and document fraud occurs throughout admission and residence procedures and takes a variety of forms. According to the implementing bodies, most fraud involves foreign breeder documents. Few applications for admission and residence are rejected on the grounds of fraudulent acts committed by aliens. This may mean that there is little fraud, that fraud is not discovered, or that fraud is difficult for the authorities concerned to identify. Since it is unknown how many cases are not discovered or are incompletely recorded or are not recorded at all, the extent of the problem remains unclear (dark number). Nevertheless, it can be deduced from the statements made by the implementing bodies, and in particular the problem areas they identify, that fraud is a serious issue.

Problems

The ACVZ noted a strong willingness and feeling of urgency among all the partners in the immigration system with regard to combating identity and document fraud. However, a

number of problems presently stand in the way of an efficient and effective approach to fraud.

Lack of central management

Tasks and responsibilities in the field of preventing and combating fraud in the immigration system are fragmented. The partners in the system are all engaged in their own serious fraud-fighting efforts, fuelled by strong commitment, but there is no central coordination of their activities. Cooperation between partners is often ad hoc and temporary. There is no integrated, long-term vision, nor is there a coherent framework for identifying and preventing fraud.

Establishing identity and identifying cases of fraud

In addition to the lack of central coordination and management, all the bodies we consulted experience problems in establishing the identity of aliens and identifying cases of fraud. Almost all of them question the quality of procedures to establish identity. They do not consider themselves or the other partners sufficiently able to recognise instances of fraud. This is alarming, because in practice it can lead to violations of the principle of legitimate expectations. The reasons for the lack of expertise and knowledge lie in efforts to speed up procedures and a lack of investment in people and equipment. This applies not only to the Ministry of Foreign Affairs and the missions abroad, but also to the IND and the municipalities. Current working methods, whereby procedures to verify and establish identity are carried out on a single occasion by non-specialised administrative staff working under pressure, are unwise and not cost-effective.

The final problem in establishing the identity of aliens and identifying cases of fraud is linked to the way in which municipalities and the IND put verification policy into practice. On the basis of procedural and financial considerations they now rarely verify the accuracy of the content of foreign breeder documents, even though these documents have great evidential value in the procedures described and at the same time are the most susceptible to fraud. In effect, this facilitates document fraud.

Recording fraud

Fraudulent acts committed by aliens in applying for admission and residence are not recorded by the implementing bodies or are recorded in different ways and in a variety of systems. Partly for this reason, there is no adequate view of the nature and extent of the problem. However, clear registration of such cases will only be possible once all involved have adopted the same terminology.

Prosecution

Most municipalities have no specific agreements with the Aliens Police on reporting fraudulent acts committed by aliens in order to be registered in the GBA. Many local officials regard the process of making a criminal complaint as beset with difficulties and as a cause of great frustration before they even start.

The survey of IND offices revealed that while there are agreements between the IND and the Aliens Police, there is little feedback from the police regarding criminal complaints. Such feedback is not only vital to increasing insight into the nature of the problem, it is also important for subsequent assessments of the scope for prosecuting fraudulent acts.

Recommendations

The problems identified have led to the following recommendations. For further details see chapter 4 of the Advisory Report.

Regarding the legal framework

1. Advocate a uniform definition of fraud in the European legislation.
2. Establish clear guidelines for imposing an obligation to report to the chief of police on asylum seekers with damaged fingertips.
3. Weigh the interests involved carefully before opting for central storage of biometric data.

Regarding the nature and extent of fraud

4. Commission further social science research into the nature and extent of identity and document fraud in the immigration system.

Regarding central management

5. Establish a single head of identity management.

Regarding establishing identity and identifying cases of fraud

6. Bring expertise and knowledge together in a limited number of immigration offices.
7. Remove the financial obstacle to submitting requests for verification.
8. At EU level and together with the countries of origin, explore ways to improve their population registers.

Regarding recording of fraudulent acts

9. Reach practical agreements on the terminology used and its meaning.
10. Record fraudulent activity in a uniform manner in a single system, the BVV (Basisvoorziening Vreemdelingen) database.