

200602402/1.

Date of judgment: 7 August 2006

ADMINISTRATIVE JURISDICTION DIVISION

Judgment applying section 8:54, subsection 1 of the General Administrative Law Act (*Algemene wet bestuursrecht*) to the appeal lodged by:

S. Nzapali,
appellant,

against the judgment given on 20 February 2006 in case no. AWB 05/28257 by
The Hague district court, sitting in Assen, in the case between:

the appellant

and

the Minister for Immigration and Integration

1. Course of proceedings

By decision of 27 September 2004 the Minister for Immigration and Integration ('the Minister') declared the appellant an undesirable alien and hence subjected him to an exclusion order (*ongewenstverklaring*).

By decision of 27 May 2005 the Minister declared the appellant's objection to this decision unfounded. This decision is appended to this judgment.

By judgment of 20 February 2006, sent on 2 March 2006, The Hague district court, sitting in Assen, ('the district court') declared the appellant's application for judicial review of the decision of 27 May 2005 unfounded. This judgment is appended to this judgment.

The appellant lodged an appeal against this judgment by letter received by the Council of State on 30 March 2006. This letter is appended to this judgment.

The minister responded by letter of 14 April 2006.

The hearing subsequently concluded.

2. Considerations

2.1. In grounds of appeal 2 and 3, the appellant argues inter alia that – in brief – in holding that it is possible to impose an exclusion order on an alien who has been denied a residence permit pursuant to article 1F of the Convention Relating to the Status of Refugees signed in Geneva on 28 July 1951, as amended by the New York Protocol of 31 January 1967, but who cannot be expelled to his country of origin because of the risk that he would be exposed to treatment contrary to article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the district court failed to appreciate that such an exclusion order is disproportionate because it compels the alien in question to commit a criminal offence.

2.1.1. The district court was right to hold that simply as a consequence of the final and unappealable refusal to grant the appellant an asylum residence permit, the appellant was under a legal obligation before the exclusion order was

imposed to leave the Netherlands of his own volition. The fact that in the decision of 28 February 2003 upholding the decision to deny him a residence permit the Minister stated that the appellant would not be forcibly expelled to his country of origin is unaffected by the exclusion order.

The district court was also correct to hold that the question of how the consequences under criminal law of the exclusion order are related to the fact that the appellant will not be expelled to his country of origin should be answered by the Public Prosecution Service and the criminal courts.

2.1.2. For the rest, the proportionality of the exclusion order should be considered in the assessment of the individual merits of the decision to impose an exclusion order on the alien in question. In considering the appellant's submissions in his application for review, the district court rightly found no grounds for the conclusion that the Minister, who devoted some of the considerations in the decision of 27 May 2005 to this assessment of the individual merits, could not reasonably have declared the appellant an undesirable alien and hence subjected him to an exclusion order.

Grounds of appeal nos. 2 and 3 are to this extent untenable.

2.2. The appellant's further submissions which meet the requirements of section 85, subsections 1 and 2 of the Aliens Act 2000 do not warrant the setting aside of the contested judgment. Since the grounds for appeal do not give rise to any questions which should be answered in the interests of legal uniformity, the development of the law or legal protection in the general sense, the Division will confine itself, having regard to section 91, subsection 2 of the Aliens Act 2000, to this opinion.

2.3. The appeal is manifestly unfounded. The contested judgment is upheld.

2.4. There are no grounds for ordering the payment of costs in the action.

3. Decision

The Administrative Jurisdiction Division of the Council of State
giving judgment in the name of the Queen:

upholds the contested judgment.

Done by R.W.L. Loeb, President, and B. van Wagendonk and H.G. Lubberdink,
State Councillors, in the presence of M.J.C. Beerse, officer of the Council of
State.

(Signed)

Loeb
President

(Signed)

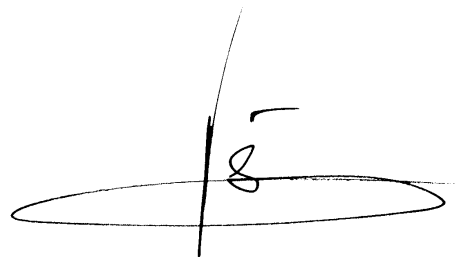
Beerse
Officer of the Council of State

Pronounced in open court on 7 August 2006

310-470.

Sent:

Issued as a true copy of the original,

A handwritten signature in black ink, consisting of a large, sweeping horizontal stroke with a vertical line intersecting it near the center, and a small loop on the right side.

H.H.C. Visser,
Director, Administrative Jurisdiction
Department
For the Secretary of the Council of
State