

CASE LAW COVER PAGE TEMPLATE

Name of the court ¹ (English name in brackets if the court's language is not English): Rechtbank Den Haag, zittingsplaats Amsterdam (Court of first instance The Hague, seat Amsterdam)			
Date of the decision:	26-10-2016	Case number:²	AWB 15/16253 ECLI:NL:RBDHA:2016:12824
Parties to the case: Applicant v. State Secretary for Security and Justice			
Decision available on the internet? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
If yes, please provide the link: https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2016:12824 (If no, please attach the decision as a Word or PDF file):			
Language(s) in which the decision is written: Dutch			
Official court translation available in any other languages? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If so, which):			
Countr(y)(ies) of origin of the applicant(s): Eritrean			
Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s): the Netherlands			
Any third country of relevance to the case:³			
Is the country of asylum or habitual residence party to:			
The 1951 Convention relating to the Status of Refugees <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Relevant articles of the Convention on which the decision is based: X	
(Only for cases with statelessness aspects) The 1954 Convention relating to the Status of Stateless Persons <input type="checkbox"/> Yes No		Relevant articles of the Convention on which the decision is based: X	
(Only for cases with statelessness aspects) The 1961 Convention on the Reduction of Statelessness <input type="checkbox"/> Yes No		Relevant articles of the Convention on which the decision is based: X	
(For AU member states): The 1969 OAU Convention governing the specific aspects of refugee problems in Africa <input type="checkbox"/> Yes No		Relevant articles of the Convention on which the decision is based: X	
For EU member states: please indicate which EU instruments are referred to in the decision		Relevant articles of the EU instruments referred to in the decision: Directive 2003/86/EC on the right to family reunification, Article 2(f).	

Topics / Key terms: (see attached 'Topics' annex):

**Unaccompanied minor
Family reunification
Family Reunification Directive**

Key facts (as reflected in the decision): [No more than 200 words]

By decision of 27 May 2015, the State Secretary denied the application for a Provisional Residence Permit (mvv) of the parents and three minor brothers of an unaccompanied minor in the Netherlands, which they needed in order to join their daughter/sister, who has a residence permit in the Netherlands, for family reunification. The daughter is the referent, and was born on 2 June 1996. She arrived in the central reception location in Ter Apel on 3 December 2013 and her residence permit was granted on 21 October 2014, with retroactive effect until the date of application, which was 26 February 2014 (at that time she was 17 years and 9 months old). With help of the Dutch Refugee Council she applied for family reunification on 23 December 2014. The State Secretary denied the application by his decision of 27 May 2015 based on the fact that at the moment of application, the applicant was 18 years old and thus no longer a minor. The State Secretary declared the following appeal unfounded by his decision of 13 August 2015, after which the parents of the referent appealed that decision at the court of first instance. They argue that the referent's age at the moment of the application for the mvv is not relevant, the age at the moment of arrival of the referent in the Netherlands is.

Key considerations of the court (translate key considerations (containing relevant legal reasoning) of the decision; include numbers of relevant paragraphs; do not summarize key considerations) [max. 1 page]

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1. The referent applied for asylum in the Netherlands on 26 February 2014, when she was still a minor. During the asylum procedure, the referent reached the age of 18. On 21 October 2014 she was granted a residence permit with retroactive effect, starting on 26 February 2014. On 23 December 2014 she applied for family reunification with the help of the Dutch Refugee Council.

3. The applicants argue that the defendant wrongfully denied their application for a Provisional Residence Permits (mvv), as according to Article 2(f) of the Family Reunification Directive, the reference date that is used to determine whether a person qualifies as an unaccompanied minor is the moment of arrival of the alien in the Member State concerned. It is uncontested that the referent was a minor and alien at the moment of arrival in the sense of Article 2(f). According to them, it is not the fault of the referent that the treatment of her application was delayed, and that she turned 18 before she was granted her residence permit. They argue that the decision to deny their application contradicts with the Family Reunification Directive.

5.2. The Administrative Jurisdiction Division of the Council of State decided in its judgments of 23 November 2015 that the circumstance in which an asylum applicant reaches the age of 18 after entering the territory of the Member State can be taken into consideration when looking at the scope of Article 2(f) FRD. The court of first instance sees grounds to doubt this judgment of the Council of State. The text of the article seemingly only allows for two exceptions with regards to the moment of arrival being the reference date, and reaching the age of 18 after entering is not one of them. The court notes the guidelines regarding application of the Family Reunification Directive and an announcement of the European Commission towards the European Council and the Parliament that stated that as acceptance of family reunification is the norm, exceptions must be interpreted strictly. Moreover, the guidelines do not provide any support to the Council of State's argument that a person cannot be considered an unaccompanied minor in accordance with Article 2(f) FRD if they reach the age of 18 after entering the territory of the Member State.

5.3. The court decides that the case does not concern an *acte clair*, as the Court of Justice has not spoken about the relevant questions in the case at hand in a previous judgment.

Consequently, the court decides to start the preliminary reference procedure and ask the following questions to the Court of Justice of the European Union:

With regards to family reunification of refugees, does the term ‘unaccompanied minor’ in the sense of Article 2(f) of the Family Reunification Directive cover a citizen of a third country or a stateless person younger than 18 years old, who arrives in the territory of a Member State without company of a person of age deemed responsible by legislation or common law, and who:

- **Applies for asylum,**
- **Turns 18 during the asylum procedure taking place on the territory of the Member State,**
- **Is granted asylum with retroactive effect until the date of application,**
- **And then proceeds to apply for family reunification?**

Other comments or references (for example, links to other cases, does this decision replace a previous decision?)

Administrative Jurisdiction Division of the Council of State, 23 November 2015,
ECLI:NL:2015:RVS:3711.

Administrative Jurisdiction Division of the Council of State, 23 November 2015,
ECLI:NL:2015:RVS:3712.

Court of first instance The Hague, seat Arnhem, 26 February 2015.

EXPLANATORY NOTE

1. Decisions submitted with this form may be court decisions, or decisions of other judicial, quasi-judicial and administrative bodies.
2. Where applicable, please follow the court's official case reference system.
3. For example in situations where the country of return would be different from the applicant's country of origin.

For any questions relating to this form, please contact the RefWorld team at the address below.

Please submit this form to:

Protection Information Unit
Division of International Protection
UNHCR
Case Postale 2500
1211 Genève 2 Dépôt
Switzerland
Fax: +41-22-739-7396
Email: refworld@unhcr.org