

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 Rotterdam (Court of first instance The Hague, seat Rotterdam)	
Date of the decision:	16-08-2016
Case number:²	AWB 16/8200
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://www.vluchtweb.nl/system/files/Vluchtweb/documents/jurisprudentie/jurisprudentie-nationaal/rechtbanken/2016-08-16%2CRb%20Rotterdam%2C%20AWB%2016-8200%2Cmvv%2Cnareis%2Cama%2Cpeilmoment%2Cp.pdf	
(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): Unknown	
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**

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

By decision of 9 November 2015, the State Secretary rejected the application for a Provisional Residence Permit (visa) in the context of family reunification of the parents of an unaccompanied minor in the Netherlands, which they needed in order to join their son, who has a residence permit in the Netherlands. The son is the referent. He was born on 2 August 1997 and applied for a visa for his parents on 10 September 2015. The State Secretary rejected the application based on the fact that at the moment of application, the applicant was 18 years old and thus no longer a minor. The parents appealed the decision at the court of first instance. They argued that the referent's age at the moment of the application for the visa is not relevant, the age at the moment of arrival of the referent in the Netherlands is.

The court of first instance declared the appeal founded and quashed the State Secretary's decision. Consequently, the State Secretary was ordered to make a new decision, taking into account the considerations in this judgment.

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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2. As the Administrative Jurisdiction Division of the Council of State considers in its judgment of 23 November 2015, a person is an “unaccompanied minor” in the sense of Article 2(f) of the Family Reunification Directive when that person is unaccompanied and younger than 18 years old at the moment of arrival on the territory of the Member State. The Council of State also considers that other factors that take place after arrival can also be of influence. The court of first instance decides that the circumstance that a minor turns 18 after arriving in the territory of the Member State does not constitute such a factor. The fact that the minor turned 18 after arriving in the territory of the Member State is not relevant when answering whether this person is to be considered an “unaccompanied minor” in the sense of the Family Reunification Directive.

This explanation was also given by the court of first instance seat Roermond in its judgment dated 26 April 2016 (ECLI:NL:RBDHA:2016:4713). It follows from Article 29(2) Aliens Act 2000 that these provisions strive to enable family members to apply for asylum following their family member when they were part of a family at the moment the referent arrived in the Netherlands. This also points in the direction that the moment of arrival is leading instead of the moment of the application for a visa. This could be different in case the family ties are broken off after arrival in the Netherlands, or the three month term to apply for a visa has passed, but neither of these conditions apply to the case at hand.

Judgment

The court of first instance declares the appeal founded and quashes the State Secretary’s decision. Consequently, the State Secretary is ordered to make a new decision, taking into account the considerations in this judgment.

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.

Court of first instance The Hague, seat Roermond, 26 April 2016, ECLI:NL:RBDHA:2016:4713.

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.

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