

CASE LAW COVER PAGE TEMPLATE

Name of the court ¹ (English name in brackets if the court's language is not English): Raad van State (Council of State)	
Date of the decision:	15-06-2016
Case number:²	201508135/1/V3
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.raadvanstate.nl/uitspraken/zoeken-in-uitspraken/tekst-uitspraak.html?id=88084 (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): Azerbaijan	
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: Article 1(A), Article 1(C)
(Only for cases with statelessness aspects) The 1954 Convention relating to the Status of Stateless Persons <input type="checkbox"/> Yes <input checked="" type="checkbox"/> 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 <input checked="" type="checkbox"/> 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 <input checked="" type="checkbox"/> 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: Article 11 and Article 14 of the Qualification Directive, Directive 2011/95/EU

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

Cessation clauses
Humanitarian protection
1951 Refugee Convention
Handbook UNHCR
Qualification Directive

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

The applicant is a woman from Azerbaijan. On 17 December 2010 she was granted a temporary residence permit following her asylum application. In 2011, 2012 and 2013 she travelled to Azerbaijan, each time making use of a visa issued by the Embassy of Azerbaijan in the Hague. Reasons for her travels were to attend her husband's funeral, to assist her daughter with a miscarriage and to assist her brother in law who was critically ill. Upon return to the Netherlands in 2013 the applicant supposedly stated in front of the Royal Netherlands Marechaussee that she returned from holiday in Azerbaijan, which she later denied. Based on these events the State Secretary decided to investigate. Following this investigation the State Secretary withdrew the applicant's residence permit on the basis of Article 32(1)(c) Aliens Act 2000, with retroactive effect till 5 July 2011, the day on which the first visa was granted. The State Secretary based his decision solely on the first cessation clause. The applicant argues primarily that the court of first instance should not have concluded that her application for a travel visa with the embassy of Azerbaijan meant that she voluntarily re-availed herself of the protection of Azerbaijan. Secondly the applicant argues that her situation should be deemed serious enough to grant a renewal of her residence permit based on 'temporary humanitarian grounds'.

The applicant lodged an appeal with the Administrative Jurisdiction Division of the Council of State. The appeal was declared not grounded.

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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4. Revoking a person's refugee status is done according to Article 14(1) of the Qualification Directive. Article 14(1) QD has been implemented in Article 3.105c, currently Article 3.105d Aliens Decree 2000, read in conjunction with Article 32(1)(c) Aliens Act 2000. The cessation clauses themselves have not been implemented directly in Dutch legislation. Due to this, the Administrative Jurisdiction Division of the Council of State states that it is necessary to research how full effect can be given to the Qualification Directive. This obligation to interpret conform the Qualification Directive is limited by general principles of law and can't be a ground for interpretation *contra legem*.

7. According to the Council of State following this research, the first cessation clause consists of three requirements: the refugee has to have acted voluntarily, this action has to show the intention to obtain protection and the country of origin has to have actually provided the protection. In the case at hand the applicant contests the second and third requirement. Whether or not these requirements have been fulfilled depends on the facts and circumstances of the case.

The Council of State considers the fact that the applicant travelled to Azerbaijan three times, making use of her refugee passport and the visa's she acquired from the embassy of Azerbaijan. Obtaining these visas can be considered as 'obtaining an entry permit' in the sense of paragraph 122 of the 'Handbook on Procedures and Criteria for Determining Refugee Status (1979)'. On all three occasions the applicant legally passed the border control on the international airport of Baku. Furthermore, the length of the visits did not relate to the reasons for the visits as stated by the applicant. Due to lacking explanation, the length and frequency of the visits are thus considered to constitute 'regular visits to that country spent on holidays' as explained in paragraph 125 of the Handbook. During her visits she was constantly traceable for the authorities in Azerbaijan, which lead the State Secretary to conclude that she voluntarily applied for protection by the Azerbaijani authorities, and that she received this protection. The court of first instance was right to follow this conclusion.

8. Following these previous considerations, there is no need to ask prejudicial questions as requested by the applicant, as there are no doubts as to how to decide the case at hand taking into account the European legislation concerned (*Acte clair*).

9. Secondly the applicant argued that the court of first instance assessed wrongly that the State Secretary reasonably came to the conclusion that her situation did not warrant a renewal of her residence permit based on 'temporary humanitarian grounds'.

10. It was not contested that the State Secretary did include all of the applicant's statements in his decision. It is said that the State Secretary has a margin of discretion when making his decision. The court of first instance was right to conclude that the State Secretary could reasonably come to the conclusion that the applicant's situation does not entail grounds for renewal of her residence permit based on 'temporary humanitarian grounds'. The fact that her husband's grave is in the Netherlands is not a reason to be granted a residence permit.

Judgment

The Council of State declares the appeal unfounded, and confirms the court of first instance's judgment.

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

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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