



Review inspection into the admission and expulsion of foreign nationals in Sint Maarten, focusing on applications related to the performance of work.

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Acronyms and Abbreviations

IBP	Immigration and Border Protection
Council	Law Enforcement Council
LTU	National Ordinance Admission and Expulsion
TEATT	Ministry of Tourism, Economic Affairs, Traffic and Telecommunications
VSA	Ministry of Public Health, Social Affairs and Labour

Foreword

In 2014 the Law Enforcement Council (hereinafter: Council) published the report "*Sint Maarten welcomes you! A study into the admission and expulsion of foreign nationals in Sint Maarten, focusing on applications related to the performance of work.*" The Council formulated six recommendations for improvement. The report was offered by the Council, in accordance with the Kingdom Act Law Enforcement Council, to the Minister of Justice. However, it would appear that the report, accompanied by a response by the Minister, was not offered to Parliament. The review inspection was originally planned by the Council for 2018, but due to unforeseen circumstances, it could not be executed. The inspection, therefore, took place in 2019.

This review inspection shows that of the six recommendations that were made in 2014, only one recommendation received complete follow up, one recommendation was partially followed and the remaining four were not taken up. The recommendation that was followed pertains to the upgrading to a file registration and follow up system. The recommendation that was partially followed consists of two parts and concerns investing in the knowledge of employees with regards to recognizing falsified documents and making use of the knowledge present in Sint Maarten (1) on the one hand and on the other investigating possibilities for a file containing the most common documents from the most common falsified documents (2).

Of the four recommendations that were not followed, the first recommendation concerns cooperation with the ministry of VSA with regards to a labor market study and the formulation of a labor market policy and admission policy on the basis thereof. The second recommendation regards ensuring that the (admission) policy is effectively implemented and enforced. The third recommendation concerns the formulation and publication of policy and the final recommendation pertains to the harmonization of requirements in legislation, policy, and the application form utilized for applying for a residency permit on the one hand and the decision and removal practice of the IBP on the other.

The Council expresses the hope and expectation that this report will lead to, where recommendations have not led to (full) follow up, the Minister of Justice giving priority to their further implementation and completion.

Just as was the case with other inspections by the Council, the organizations and persons that were approached all participated in a constructive manner.

The Council would once again like to genuinely thank all the persons involved for their cooperation.

THE LAW ENFORCEMENT COUNCIL

mr. Th. P.L. Bot, chairman
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Summary and recommendations

Summary

Introduction

The Council published the following report in 2014: "Sint Maarten welcomes you! A study into the admission and expulsion of foreign nationals in Sint Maarten, focusing on applications related to the performance of work." In the report, the Council made six recommendations to resolve the identified bottlenecks with regard to admission and expulsion practices. The minister did not give a response to the report and also did not offer the report to Parliament.

The Council included a review of this report in its annual plan. This review focuses on how the recommendations have been followed up.

General conclusion

The results of this study lead to the conclusion that of the six recommendations made in 2014, only one was followed, one was partially followed and the other four were not taken up.

Recommendations that were followed

The recommendation that was followed relates to the upgrading to a file registration and follow up system (Decos Join) with which, among other things, all files can be traced smoothly and better insight is gained into the nature and quantity of the total inflow of foreign nationals to Sint Maarten and foreigners residing in Sint Maarten. The Council would like to emphasize this positive development towards digitization.

Recommendations that were partially followed

One recommendation was partially followed. This recommendation consists of two parts and concerns investing in the knowledge of employees regards recognizing falsified documents and make use of local knowledge on the one hand and on the other investigating possibilities for a file containing the most common documents from the most common countries of origin. Training has been provided for employees in various areas, but due to the lack of finances, there has been no investment in a database of the most common falsified documents that could potentially benefit the recognition of falsifications by employees.

Recommendations that were not followed

Four of the six recommendations have not been followed. The first two recommendations concern cooperation with the ministry of VSA with regards to a labor market study and the formulation of a labor market policy (responsibility VSA) and admission policy (responsibility ministry of Justice) on the basis thereof (recommendation 1) and ensure that the (admission) policy is effectively implemented and enforced (recommendation 2). The main reason for a

lack of follow up with regard to these recommendations is the fact that although they are addressed to the Ministry of Justice, they require partial cooperation and willingness of both ministries. The IBP is of the opinion that the initiative for the follow up of the recommendations should come from the ministry of VSA. For this reason, no efforts have been made from the Ministry of Justice to comply with the recommendations. However, the Council believes that it is an important task for Justice to work together with VSA so that the necessary judicial view is not lost whilst conducting a labour market study and in the preparation of policies.

The third recommendation that has not been followed concerns the formulation and publication of policy. Among other things, the Guidelines of the ministry of Justice¹ has not yet been updated and published.

The last recommendation that has not been followed concerns the harmonization of requirements in legislation, policy, and the application form utilized for applying for a residency permit on the one hand and the decision and removal practice of the IBP on the other. There is still a discrepancy between the requirements set on the application forms and which documents the IBP requires in practice.

Recommendation 2019

The Council urges the minister of Justice to prioritize the recommendations that have not yet been (fully) addressed.

The Council looks forward to the substantive results of these efforts and will continue to follow the developments with interest.

¹ Richtlijnen van de minister van Justitie van Sint Maarten met betrekking tot de toepassing van de Landsverordening toelating en uitzetting (PB 1966, nr. 17), zoals gewijzigd, en het TOELATINGSBESLUIT (PB 1985, nr. 57), zoals gewijzigd (2012).

Table 2: Results per recommendation

Recommendation	Status
To the minister of Justice	
1. Have a labor market study carried out in collaboration with the Ministry of VSA into the required quality and quantity of employees in Sint Maarten and, on the basis of this, draw up a labor market and admission policy for foreign nationals in consultation with the Ministry of VSA.	No follow up
2. Ensure that the admission policy is actually implemented and enforced and involves the results of the study in collaboration with the ministry of VSA, that at least the social and economic growth, security and legal order of Sint Maarten are protected.	No follow up
To the minister of Justice with regards to the Immigration and Border and Protection Service	
3. Design a file registration and tracking system that all files can be easily traced and better insight is gained into the nature and quantity of the total inflow of foreigners into Sint Maarten and the foreigners residing in Sint Maarten.	Followed up
4. Set unwritten policy in writing and have it published.	No follow up
5. Bring the requirements in legislation, policy and the application form on the one hand and the decision and removal practice on the other hand into harmony.	No follow up
6. Invest in the knowledge of employees with regard to recognizing falsified documents and utilize the in Sint Maarten available knowledge and research the possibilities for a database containing the most common documents from the most occurring countries of origin.	Partial follow up

1 Introduction

1.1 Background and objective

The Council published the following report in 2014: *'Sint Maarten welcomes you! A study into the admission and expulsion of foreign nationals in Sint Maarten, focusing on applications related to the performance of work.'* In the report, the Council made six recommendations to resolve the identified bottlenecks with regard to admission and expulsion practices.

In the 2014 report, the Council observed that the vast majority of applications for admission and renewals related to the performance of work were granted. If the foreign national was subsequently admitted to Sint Maarten, there was no system in place to indicate whether the period of residence had expired and the Immigration and Border Protection service (hereinafter also: IBP) would only occasionally and incidentally check whether or not the foreign national still met the conditions and adhered to the restrictions. In many cases, if the IBP found this for example to be the case with a follow up request, there would be no consequences. Nor would the previous illegal residency or entry be objected to. The inspection also showed that, as far as the Council could verify at the time, the (still) young admission organization was steadily getting its administrative processes in order.

This review inspection was intended to be carried out in 2018 in accordance with the 2018 annual plan. The Council was however forced to suspend the inspection due to unforeseen circumstances. The review inspection was therefore carried out in 2019.

The Council aims, by means of this inspection, to determine to what extent follow up and implementation have been given to the six recommendations of the Council.

1.2 Research question

The research question of this inspection is as follows:

'How was follow up given to the six recommendations formulated by the Law Enforcement Council, regarding the admission and deportation of foreign nationals in Sint Maarten in 2014?'

It regards the following six recommendations:

Recommendations to the Minister of Justice:

1. Have a labor market study carried out in collaboration with the Ministry of VSA into the required quality and quantity of employees in Sint Maarten and, on the basis of this, draw up a labor market and admission policy for foreign nationals in consultation with the Ministry of VSA.
2. Ensure that the admission policy is actually implemented and enforced and involves the results of the study in collaboration with the ministry of VSA, that at least the social and economic growth, security and legal order of Sint Maarten are protected.

Recommendations to the Minister of Justice with regards to the Immigration and Border Protection Service:

3. Design a file registration and tracking system that all files can be easily traced and better insight is gained into the nature and quantity of the total inflow of foreigners into Sint Maarten and the foreigners residing in Sint Maarten.
4. Set unwritten policy in writing and have it published.
5. Bring the requirements in legislation, policy and the application form on the one hand and the decision and removal practice on the other hand into harmony.
6. Invest in the knowledge of employees with regard to recognizing falsified documents and utilize the in Sint Maarten available knowledge and research the possibilities for a database containing the most common documents from the most occurring countries of origin.

1.3 Scope

The scope of the inspection is as follows:

Inspection period

During this inspection the Council will focus on developments from the publication of its' report in September 2014.

1.4 Assessment framework

During this inspection, the Council will examine how the Minister of Justice and the Immigration and Border Protection have followed up on the six recommendations regarding the subject of admission and expulsion of foreign nationals from 2014. The recommendations therefore form the assessment framework for this inspection.

1.5 Method of research

A written questionnaire was drawn up by the Council. The ministry of Justice and the Immigration and Border Protection were asked to describe the state of affairs regarding the recommendations. In this way, the Council gained insight into the situation. In addition, a number of additional written questions were answered by the IBP, an interview was conducted with IBP employees and insight was given into the new IBP case system.

Where applicable, the Council also processed newly collected information and documents supplied by the organisation.

The factual findings in the report were presented to the relevant authorities for rebuttal.

1.6 Reading guide

After the introductory chapter 1, chapter 2 presents the research results, with an analysis and conclusion following at the end of each recommendation. Chapter 3 contains the general conclusion and recommendation

2. Research results

Introduction

In this chapter the Council describes per recommendation the findings and conclusions of the report published in 2014. Furthermore the Council conveys the results of this follow up inspection in 2019. Lastly, an analysis and conclusion follows each recommendation.

Additional

There has been an important development with regard to border surveillance and surveillance duties. The structure of the border control task has already been described in the reports *'Border control on the movement of persons in Sint Maarten'* (2014) and *'Sint Maarten welcomes you!'*² (2014). However, even then, the Council noted that the border protection task is assigned to different services by different laws and recommended at the time that the legislator clarify this.³

In 2012, under the auspice of one of those laws, a covenant was concluded between the KPSM and the Immigration and Naturalization Department (IND), stating, among other things, that border control, as well as the supervision, admission and expulsion of foreign nationals, a task is of the immigration service (now called Immigration and Border Protection (IBP)), and that criminal investigation is 'in principle' a task of the KPSM. The covenant aimed to transfer the tasks, powers and responsibilities of the KPSM with regard to immigration to officials of the IBP and arranged for operational cooperation between the KPSM and the IBP. The second line control (or back office) remained the responsibility of the KPSM. In the course of 2012, border control of the movement of persons by the immigration service was subsequently transferred to the IBP. This means that access (border control), admission and supervision have been placed within one organization (the IBP) and placed under the authority of the director of the IBP.

² 'Sint Maarten welcomes you! A study into the admission and expulsion of foreign nationals in Sint Maarten, focusing on applications related to the performance of work.' (2014).

³ See 'Landsbesluit van de Regering van Sint Maarten houdende regels omtrent de instelling van vreemdelingendiensten en de taak en organisatie van de ambtenaren van de immigratie Landsbesluit ambtenaren van de immigratie en Landsbesluit, houdende algemene maatregelen, tot onderverdeling en nadere uitwerking van het Ministerie van Justitie'

The IBP referred, during the review inspection, to a ministerial decree that was drafted by the Minister of Justice in 2016 whereby (again) a separation was made in certain tasks that up until then (via the covenant) had been assigned to the IBP. The border control task⁴ (first and second line) and the supervision task (including mobile supervision) became the responsibility of the KPSM and the (administrative) admission and residency task (still) the responsibility of the IBP. This ministerial decree was signed on August 23, 2016 by the Minister of Justice, and has not been published. The covenant ceased to exist on the same date.

On May 31, 2019, ‘*The protocol with regard to the cooperation between the Immigration and Border Protection Service Sint Maarten and the Police Force Sint Maarten for the period May 31, 2019 - May 31, 2020*’, was signed by the Minister of Justice, the Director of the IBP and the Chief of Police. This protocol regulates the (lasting) cooperation between the IBP and the KPSM, with regard to the execution of - based on the National Ordinance Admission and Expulsion (hereinafter: LTU) (foreign nationals), the Admission Decree and (other) related legislation and regulations – assigned tasks.

Furthermore, the annual plans and annual reports for the period 2014 up to and including 2019 were requested by the Council from the IBP. These were either not available or were requested by the IBP, but could not be submitted to the Council within the allotted time frame.

2.1 Labor market study, labor market- and admission policy and execution of the admission policy

Findings report 2014

In the 2014 report, a number of recommendations and analyses related to the subjects of a labor market study, a labor market- and admission policy and execution of the admission policy are relevant. It concerns the following passages:

The IBP does not assess, based on its own policy, whether or not the admission of a foreign national is truly in the interest of Sint Maarten, nor whether the admission concerns uneducated or low educated personnel, a category of personnel that, according to the policy, in principle should be recruited on the local labour market.

The report also notes that the IBP indeed has no authority to assess the work of the Labor Department. However, the IBP does have the responsibility to uphold its own policy, for example the policy whereby no foreigners are admitted for low and unskilled labor and whether Sint Maarten's interest has been served significantly by admitting the foreigner. Nor does the IBP check whether the foreigner, for whom an employment permit has been issued, will have sufficient means of subsistence within the context of the LTU. An assessment that must always take place with regards to public order.

Furthermore, the 2014 report by the Council states that there is no jointly supported or formulated policy. The IBP therefore leaves the implementation of an important part of its own policy to a department of VSA. The Council finds this undesirable and finds it necessary that the Ministry of Justice gain more control over the admission of foreign nationals in relation to

⁴See also the “Onderlinge regeling van Sint Maarten en Nederland als bedoeld in artikel 38, eerste lid, van het Statuut van Koninkrijk der Nederlanden tot versterking van het grenstoezicht van Sint Maarten (Onderlinge regeling versterking grenstoezicht Sint Maarten) geldend tot 1 januari 2020, Stcrt. 2017, 72542.”

the performance of work.

Lastly, the report indicates that, following the advice of the Social Economic Council of Sint Maarten, it is necessary to conduct a study into the topic of how many employees are needed in Sint Maarten and which professions, with the accompanying education and skills, are required, in relation to the quantity and quality of the labor force available in Sint Maarten. As was also previously observed in the report '*Border control of the movement of persons in Sint Maarten*'.

On the basis of such a study, a labor market- and admission policy for foreign nationals should be drawn up in collaboration with the Ministry of VSA, whereby (as the current policy aims for), the main focus is on social and economic growth, security and the rule of law of Sint Maarten. Naturally, it must be ensured that this admission policy is actually implemented and enforced.

This led to the following two recommendations:

"Have a labor market study carried out in collaboration with the ministry of VSA into the required quality and quantity of employees in Sint Maarten and, on the basis of this, draw up a labor market and admission policy for foreign nationals in consultation with the ministry of VSA."

"Ensure that the admission policy is actually implemented and enforced and involves the results of the study in collaboration with the ministry of VSA, so that at least the social and economic growth, security and legal order of Sint Maarten are protected."

Findings 2019

Labour market study

The Ministry of Justice neither the IBP has commissioned a labor market study in collaboration with VSA into the required quality and quantity of employees in Sint Maarten. As a result, the related follow up actions contained in the two recommendations mentioned above have also not taken place. This concerns the drawing up of a labor market (responsibility VSA) and admission policy (responsibility Minister of Justice) for foreign nationals and ensuring their implementation and enforcement.

The IBP is of the opinion that, in view of their statutory duties, such a study should resort primarily under the responsibility of the ministry of VSA as it regards employment permits and under the responsibility of the Ministry of Tourism, Economic Affairs, Traffic and Telecommunications (hereinafter also: TEATT) where it concerns the issuing of business permits. The Minister of Justice is namely responsible for issuing residence permits, including those related to employment permits. On the basis of the above, the IBP believes that the aforementioned ministries should be the ones to initiate such a study.

There is, however, email contact between the executive services of the ministry of VSA and the ministry of Justice with regard to the issuing of work permits and the subsequent permit for temporary residence. The IBP also strives for closer cooperation with other governmental services to improve its products and working procedures. Within this context, the initial phase consisted of discussions and the possibilities for cooperation were identified.

Admission policy

The Bureau of Statistics, an executive department of the ministry of TEATT, has conducted three labour force surveys in Sint Maarten since 2010.⁵ The purpose of these surveys was to measure the developments within the labour market of Sint Maarten.⁶

According to the IBP, in addition to the current admission policy, all possible sources - including the aforementioned surveys - will be consulted in order to arrive at the most complete admission policy possible in the future. The IBP also indicated that it strives for a restrictive immigration policy, but without assuming the responsibilities of another ministry. For example, in the event the ministry of VSA issues a work permit, the IBP does not assess whether it concerns low or uneducated labour. However, the IBP does make an assessment based on the statutory provision, which states, among other things, that a work permit will be refused if the foreign national has not yet reached the age of 25 on the day the application is submitted.⁷

Analysis & conclusion

This section focuses on two recommendations.

The first recommendation can be divided into two parts, namely, conducting a labor market study and subsequently drawing up a labor market- and admission policy for foreign nationals. This recommendation, in its entirety, has not received follow-up. However, the Council is of the opinion that this recommendation made to the Minister of Justice, to commission a labor market study in collaboration with the ministry of VSA and to use the results thereof to formulate policy, is still relevant.

The results of the aforementioned surveys, as also indicated by the IBP, can be one of the sources used for the labor market study. Although the recommendations are addressed to the ministry of Justice, some cooperation and willingness from both ministries is required. The Council believes that the involvement of the ministry of Justice is indispensable and necessary in order to collect data specifically relevant to the judiciary. Therefore, the Council is of the opinion that the ministry of Justice should endeavor to cooperate so that the necessary judicial view, in the interest of security, is not lost when a labor market study is conducted and when policy is drawn up.

Because the first recommendation has not been followed, the Council has concluded that the closely related second recommendation - on supervising the actual implementation and enforcement of the admission policy and involving the results of the study - has also not been followed. The relevance with regard to the follow up of the recommendation, as emphasized above by the Council, also applies in full here.

⁵http://www.stat.gov.sx/downloads/LFS/Results_STAT_Labour_Force_Survey_2018.pdf

⁶http://stat.gov.sx/downloads/LFS/Results_STAT_Labour_Force_Survey_2013.pdf,
http://stat.gov.sx/downloads/LFS/Results_STAT_Labour_Force_Survey_2017.pdf see also in this context [Statistische Trends. Labour force on the Dutch Caribbean island \(2019\) van Statistics Netherlands voor een vergelijkend overzicht van de Caribische eilanden van het Koninkrijk der Nederlanden.](#)

⁷ Artikel 8 LANDSBESLUIT, HOUDENDE ALGEMENE MAATREGELEN, ter uitvoering van de artikelen 3, onderdeel e, 5, derde en vierde lid, en 8, eerste lid, onderdeel f, en tweede lid, van de Landsverordening arbeid vreemdelingen, AB 2013, GT nr. 73.

2.2 File registration- and tracking system

Findings report 2014

Insofar as the Council was able to verify during this inspection, the various administrative processes within the IBP admission & residency department are in order and secure. The files also generally make a good impression and the content and structure of a file is logical and orderly. Most of the files contain the documents required by law and policy.

The Council is concerned that of the 255 selected files the IBP was unable to trace nearly a quarter (23%) within 1 to 2 days. It is therefore necessary for the IBP to introduce a file registration- and tracking system. This is also important in view of the fact that the IBP cannot provide sufficient management information. Although the service can provide information on how many initial, follow up and modified applications and how many applications have been submitted “by legal right” (“van rechtswege”) in a year, this is not possible where it regards in how many cases the application was granted, rejected or withdrawn.

Because the IBP cannot provide this type of basic data easily, government is not adequately informed about the quantity and nature of the immigration flow in Sint Maarten. If this data is unavailable, policy cannot be made and cannot be adequately implemented. The policy and the results achieved also cannot be analyzed afterwards. Good registration is therefore a basic condition for drawing up and implementing policy tailored to the situation in Sint Maarten.

The Council made the following recommendation:

“Design a file registration- and tracking system that all files can be easily traced and better insight is gained into the nature and quantity of the total inflow of foreigners into Sint Maarten and the foreigners residing in Sint Maarten.”

Findings 2019

Up until January 2, 2020, the IBP utilized the same case system as in 2014, namely Decos. An external party was hired in 2019 to upgrade the system's software to Decos Join. The lead time and further development of this upgrade took more than a year. According to the IBP, the upgrade brings a range of benefits, including efficiency and transparency, digitization of files, centralization of information, uniformity of documents and thus better (legal) products, faster service and accessible management information (at the touch of a button). For example, the IBP has indicated that until the upgrade it was difficult to generate management information due to the scattered data in the current system (Decos).

In practice, the upgrade largely means a new way of working. It is a case system (every request is a case) with which employees go through the necessary steps to create, keep track of and complete cases with the help of a workflow. In contrast to the current working method, employees will also be expected to scan all documents separately and upload them into the system (e.g. employer statement, application form, extract, etc.). The workflow will automatically create a number of documents (e.g. the decision) based on the selected and entered information. There are also various fixed digital control moments built into the process

for the different functions. However, these control moments do not relate to the authenticity of documents, this remains in the hands of the relevant personnel.

Late 2019, all IBP personnel followed a training with regard to the new work process. The work process will eventually be put into writing. First, all bugs have to be removed and any potential changes will be made, according to the IBP. In addition, if necessary, new policy rules will be drawn up that are in line with the new working method.

Decos Join was put into operation by the IBP on January 2, 2020. As of this date, all new applications are processed in accordance with the new working method. According to the ministry, the IBP has indicated that all previous files will be transferred to the new system.

The IBP also indicated that the information about the IBP and the related documents on the government's website is not managed by the IBP. Following the system upgrade and the inspection by the Council, the information on the website will be reviewed by the IBP and if adjustments are necessary, solutions will be sought.

In addition, management information was requested by the Council from the IBP regarding the number of applications granted, extended and refused in the period 2018-2019. This information was not supplied.

Analysis & conclusion

The recommendation has been followed, the system has been upgraded to a digital file registration- and tracking system, which provides better insight into individual applications, as well as the nature and quantity of the total influx of foreign nationals into Sint Maarten and foreign nationals residing in Sint Maarten. In addition, all files can be easily traced in the future. The Council is therefore pleased with this important step towards digitization, which not only benefits the organization but also the citizens. However, the Council encourages the IBP to draft the working method as soon as possible, so that this is clear to everyone.

If incomplete or incorrect information is included on the government website, the Council believes that it is the IBP's responsibility to ensure that this is corrected. As stated previously in the findings, the IBP will address this.

2.3 Drafting and publishing of policy

Findings report 2014

Policy rules can be found in the Guidelines of the Minister of Justice of Sint Maarten of May 2012. The Guidelines contain some adjustments compared to the revised instruction to the Lieutenant Governors of June 2006. The Guidelines concretise the legal provisions from the LTU and the Admission Decree.

The report also states that the IBP applies the unpublished policy that the foreign national who registered under the Brooks Tower Agreement and requests an extension of the residence permit will receive a residence permit for the duration of 1 year, even if there are gaps in the period of residency.

Furthermore, the following is included in the report on the required documents.

The application form for first admission requires an original birth certificate and, if applicable, an original marriage certificate, not older than 6 months, legalized or with an apostille. In the case of an extension application, a proof of registration from the Civil Registry is required, according to the application form. Neither the LTU nor the Guidelines state that a birth or marriage certificate or proof of registration from the Civil Registry is required.

Besides that, an employer's statement is often included in the file, but this document is not required by law, policy or listed on the application form.

Lastly, it should be noted that the IBP has an unwritten policy, with regard to the submission of a copy of a passport (for initial applications, a copy of the full passport must be submitted and for subsequent applications, a copy of the first page is sufficient). It is recommended that this applicable policy is written down and published and applied within the organization. After all, general principles of good administration require that the government is transparent and that everyone knows how it works, in order to promote the equality of justice and the sustainability of policy. Documenting and publishing the policy also promotes the integrity of the application and decision-making process and prevents the policy from being challenged in Court. It should also be noted that a fixed line of action that is not laid down in a policy rule cannot serve as an adequate motivation for a decision.

The Council therefore made the following recommendation:

"Set unwritten policy in writing and publish it."

Findings 2019

The ministry of Justice indicated that the Minister intends to actualise and publish the current policy as contained in the Guidelines (dating from 2012). The latter partly because the judiciary has already accepted the Guidelines as a policy and to promote legal certainty, according to the ministry.

According to the IBP, changes are made to existing working procedures when necessary. Since the Council's report in 2014, two internal work instructions have been drawn up by the IBP. In May 2016, the IBP issued a work instruction on the conditions for eligibility for a continued residence permit. This work instruction was subsequently amended in May 2017. Both instructions have not been published.

On the government's website, and subsequently on the IBP web pages⁸, under '[Brochures and Forms](#)', you can find five different digital documents with regards to an initial application for residency (dating September 2013), changes regarding permits (dating September 2013), renewals (dated September 2013), entry requirements (updated May 2015) and costs related to residence permits (undated). A number of other "links" do not work. Various undated forms are available under "[Entry and Residence](#)", divided into six categories. These "links" work. In the application form for first admission, an original birth certificate and, if applicable, an original marriage certificate, are still required. According to the application form, proof of registration from the Civil Registry is required for an extension application (see also section 2.4). It has already been pointed out in section 2.2 that the information about the IBP on the government website is not managed by the IBP and that the IBP will review the information.

⁸<http://www.sintmaartengov.org/government/JUS/Immigrationdepartment/Pages/default.aspx>

The IBP indicates that cooperation with its own ministry or other ministries to draw up policy depends on the subject, its complexity and the respective responsibilities.

Analysis & conclusion

The Council considers this recommendation as not being followed because the unwritten policy has not been set in writing and has therefore not been published. The situation as established in 2014 still applies. The Council believes that the Minister's intention to update the Guidelines and that of the IBP to establish the new working method in writing offers an excellent opportunity to also immediately review the unwritten policy, update it where necessary and set it in writing. The Council therefore believes that the above should be prioritized as soon as possible.

2.4 Synchronize decision- and expulsion practices with legislation, policy and the application form

Findings report 2014

The following passages are relevant in the 2014 report.

“(...) Furthermore, the requirements that follow from legislation and the (unwritten) policy and the requirements stated in the application form must be synchronized, so that the foreign national is fully informed when applying about the necessary documents and the conditions that must be met. The foreign national must not subsequently find out at the service desk that additional requirements apply. For example, the condition that the foreign national is insured against medical expenses and that a deposit must be paid is not stated on the application form. The fact that a marriage or birth certificate is required to grant an application for admission is not stated in the immigration legislation or the policy. The government should be predictable and unnecessary administrative actions for the citizen should be avoided. The latter also applies, for example, where the IBP asks the foreign national to provide a proof of registration from the Civil Registry, while the service itself has the possibility to view the files of the Civil Registry.

It is also necessary to reconcile the requirements laid down in the legislation, policies and application forms on the one hand and decision-making practices on the other. For example, the application forms state that a guarantor's declaration is required, although the IBP no longer checks this condition in practice. Furthermore, an employer statement is often included in the file, but this document is not required by law, policy or application form.”

This led to the following recommendation:

“Bring the requirements in legislation, policy and the application form on the one hand and the decision and removal practice on the other hand into harmony”

Findings 2019

The inspection by the Council shows that there are discrepancies between legislation, policy and the application form on the one hand, and decision-making and expulsion practices on the other. Section 2.3 has already shown that certain documents are still listed in the forms as being required, even though this is not a legal requirement.

Analysis & conclusion

This recommendation has not been given follow up. The words expressed by the Council in the analysis and conclusion of paragraphs 2.2 and 2.3 also applies to this paragraph. The Council therefore proposes to also include this recommendation when updating and (possibly) drawing up policy (2.3) and when drafting the work procedures (2.2).

2.5 Falsified documents

Findings report 2014

Signatures on declarations of conduct and birth and marriage certificates are sometimes legalized. Because the content of such a statement is never verified, it is not certain whether the content of the document is reliable. If there are doubts about the authenticity of a document, the intake staff at the servicedesk are able to consult document specialists from the department Mobile Supervision Foreign Nationals, that is housed in the same building. They indicate that they rarely make use of this option. In the Council's opinion, this may facilitate abuse of the regulation. In a country whose population originates from over a 100 countries, there can never be a conclusive check on the authenticity of documents. However, the IBP can invest in employee training and make use of the knowledge of the document specialists available to them. Another possibility that can be considered is designing a database in which the most common documents from the most common countries of origin are stored.

This led to the following recommendation:

“Invest in the knowledge of employees with regard to recognizing falsified documents and utilize the in Sint Maarten available knowledge and research the possibilities for a database containing the most common documents from the most occurring countries of origin.”

Findings 2019

According to the IBP, various trainings have taken place in areas such as document management and -archiving for personnel since 2014. If there are new developments with regard to the forging of documents, personnel receive training in addition to refresher courses. An overview of the trainings that were followed between 2014-2019 was requested from the IBP, but was not provided during the inspection period. According to the IBP, the forgery of documents generally comes to light at the Civil Registry, which is why the verification of the authenticity of the documents usually takes place there.

There are therefore few cases of forgeries detected at the IBP, according to the IBP. The IBP also indicated that it carries out an authentication check of the documents provided by individuals at three different stages (during the intake of an application, in the review of the application and in the verification of the decision on the application) within the application process. This is done in addition to the apostille (authentication by an embassy or other official body abroad) of the foreign documents. According to the IBP, when there is a suspicion of forgery, assistance is requested from judicial chain partners.

Furthermore, the IBP has indicated that there are databases for this purpose, but that they do not have access to these databases specifically designed for identifying the most common types of falsified documents from the most common countries of origin. This is because in order to access these databases a fee is required. Therefore even though such a resource is desired by the IBP, it cannot be procured at this time, given that no funds are currently

earmarked in the organization's budget for this purpose and given the country's financial situation, this according to the IBP.

Analysis & conclusion

The recommendation consists of two parts and is considered to be partially followed. The first part of the recommendation concerns the subject of knowledge, namely investing in the knowledge of the employees, specifically with regard to falsified documents and using the local knowledge available. According to the IBP, various training courses have taken place, including in the field of falsified documents. However, the Council was unable to ascertain the exact amount invested in the knowledge of staff, as it pertains to identifying falsified documents, due to the lack of information provided. Providing insight into this subject could have a positive effect on the follow up of this part of the recommendation. Local knowledge is being utilised, when necessary, chain partners are called in to support the identification of falsified documents. The second part of the recommendation with regard to examining the possibilities for a database containing the most common documents from the most common countries of origin has been followed. The IBP is aware of the existence of various databases on falsified documents and would like to have access to such. However, this is currently not feasible due to financial constraints.

3. General Conclusion & recommendation

General conclusion

The results of this inspection lead to the conclusion that of the six recommendations made in 2014, only one was followed, one was partially followed and the other four were not taken up. The results are presented per recommendation in table 3.

Recommendation 2019

The Council urges the minister of Justice to prioritize the recommendations that have not yet been (fully) addressed.

The Council looks forward to the substantive results of these efforts and will continue to follow the developments with interest.

Table 3: Results per recommendation

Recommendation	Status
To the minister of Justice	
1. Have a labor market study carried out in collaboration with the Ministry of VSA into the required quality and quantity of employees in Sint Maarten and, on the basis of this, draw up a labor market and admission policy for foreign nationals in consultation with the Ministry of VSA.	No follow up
2. Ensure that the admission policy is actually implemented and enforced and involves the results of the study in collaboration with the ministry of VSA, that at least the social and economic growth, security and legal order of Sint Maarten are protected.	No follow up
To the minister of Justice with regards to the Immigration and Border and Protection Service	
3. Design a file registration and tracking system that all files can be easily traced and better insight is gained into the nature and quantity of the total inflow of foreigners into Sint Maarten and the foreigners residing in Sint Maarten.	Followed up
4. Set unwritten policy in writing and have it published.	No follow up
5. Bring the requirements in legislation, policy and the application form on the one hand and the decision and removal practice on the other hand into harmony.	No follow up
6. Invest in the knowledge of employees with regard to recognizing falsified documents and utilize the in Sint Maarten available knowledge and research the possibilities for a database containing the most common documents from the most occurring countries of origin.	Partial follow up

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