

DECISION

on the application of 28 August 2015
of a former student of the Duisenberg School of Finance, hereinafter applicant,
regarding alleged actions of the Duisenberg School of Finance, hereinafter DSF.

1. PROCEEDINGS

On 28 August 2015 the National Commission received a letter, hereafter the application, regarding a number of actions of DSF. The National Commission also received the application by regular mail on 31 August 2015. In response to an inquiry by the National Commission on 1 September 2015, applicant added that same day a number of documents to the application: a copy of the applicant's residence permit (valid until 1 December 2014) and a copy of a letter by DSF dated 23 January 2015. The letter is a response by DSF's chairman to the applicant's complaint. Applicant included a copy of the *rules and regulations* of DSF.

The National Commission met on 9 September 2015 to discuss the application. On 10 September 2015, the National Commission presented the application to DSF and asked the educational institute to give a substantive response and furthermore to send a copy of applicant's file. DSF's substantive response was given in an email message of 24 September 2015. At the same time DSF informed the National Commission that as of 30 September 2015 its educational programmes are being carried out by the *Duisenberg Honours Programme* of the University of Amsterdam (UvA) and the Vrije Universiteit Amsterdam (VU University), though both these institutes have not taken over DSF's obligations. Since DSF will terminate its activities as an independent educational institute, no new students have been admitted to the course year 2015-2016. The existing students will be given the opportunity to complete their education at DSF.

The National Commission met on 21 October 2015 and on 18 November 2015 in order to pronounce its decision, after which the case was closed.

2. CONTENT OF THE APPLICATION

The application concerned the procedure followed by DSF regarding the de-registration of applicant with the Immigration and Naturalisation Service (hereinafter IND) on 20 November 2015, on the grounds that applicant did not meet the academic achievement standard as formulated in article 5.5 of the Code of Conduct. Applicant stated that DSF had violated articles 4.6, 5.5 and 5.6 of the Code of Conduct.

3. ADMISSIBILITY

The National Commission is competent to have jurisdiction in disputed conduct of educational institutions listed in the register of the Code of Conduct, to the extent that the conduct took place after the date of inclusion in the register. In the period in which the alleged actions took place (2014), DSF was an educational institute for higher education and as such included in the Code of Conduct.

Applicant is a former student of Pakistan nationality. The documents submitted with the application prove that he had been in the possession of a temporary regular residence permit for study purposes, valid until 1 December 2014. Prior to this application, applicant filed a complaint with DSF. The institute declared this complaint inadmissible on the grounds that at the time applicant was no longer registered as a student.

Article 5.6

This article stipulates that when an educational institute discovers that registration with the institute has been terminated by the student requiring a residence permit, it shall notify the IND of that fact.

Applicant is of the opinion that his de-registration with the IND was done by DSF contrary to the stipulations of article 5.6, as DSF had offered the possibility of renewed registration as of 1 September 2014.

The National Commission observes that the reason for de-registration with the IND lies in the stand taken by DSF that applicant had made insufficient study progress in the course year 2013-2014, without having excusable reasons. Therefore, de-registration of applicant is not linked to a possible renewal of registration as a student for the course year 2014-2015 and was done according to the stipulations of article 5.5, not according to article 5.6 of the Code of Conduct.

As the situation described in article 5.6 of the Code of Conduct was not relevant at the time of de-registration, and as applicant was not de-registered by DSF on the grounds of that article, this issue cannot be regarded as a violation of the stipulation mentioned earlier, and consequently the application is not admissible insofar as it regards the alleged violation of article 5.6 of the Code of Conduct.

4. ASSESSMENT

Article 4.6

According to this article, when a student registers with an educational institute, such institute is obliged to ask the student requiring a residence permit for a written statement of consent with the procedure in which it shall de-register the student with the IND in case of termination of his registration as a student or in case of insufficient study progress, as meant in articles 5.5 and 5.6.

Applicant states that DSF had not informed him about this procedure and furthermore that he had not signed a document in which he consents with the provisions of this article.

The National Commission first established that regarding the information about this subject this is an obligation of the educational institute according to article 2.1 of the Code of Conduct, not according to article 4.6 as cited by the applicant. The response to the application given by DSF proves that it informed its students and prospective students on its - previous - website about the academic achievement standard and that this was also the subject of a seminar at the beginning of the course year. According to the information given by DSF, applicant also took part in an extensive admission procedure in which information was given about the requirements for entry documents and residents permits for international students. Therefore the National Commission is of the opinion that it has not been proven that DSF violated the stipulations of article 2.1 and that applicant was duly informed about the academic achievement standard.

With regard to the statement of consent as meant in article 4.6 of the Code of Conduct, the National Commission noted that from the text of article 4.6 it can be understood that this obligation is linked to the time of registration of a student requiring a residence permit. Applicant had registered at DSF as of 1 September 2012, which registration was renewed as of 1 September 2013. On 1 June 2013 the Dutch Modern Migration Policy Act came into force and the provisions of article 5.5 of the Code of Conduct came into effect. This means that the academic achievement standard in relation to the residence permit was not yet effective on 1 September 2012, but was in fact effective on 1 September 2013. The National Commission was not able to ascertain that applicant signed such a statement. To that extent the application was upheld.

Article 5.5

Article 5.5 of the Code of Conduct requires the educational institute to measure the study progress of the international student at the end of each course year. Sufficient study progress is when 50% (or more) of the proportional nominal study load for the course year or a part thereof has been achieved. In case of insufficient study progress, the institute shall establish the reasons for it. If it proves that the international student has not or insufficiently studied or cannot achieve the level, the educational institute will de-register the student with the IND. If it proves that personal circumstances as meant in article 7.51 of the Dutch Higher Education and Research Act and article 2.1 of the Implementation Decree Higher Education and Research Act formed the reasons of insufficient study progress, binding agreements shall be made with the international student in order not to endanger graduation. In such cases the student will not be de-registered with the IND.

Applicant stated that personal circumstances applied to this situation, that therefore de-registration with the IND should not have been done by DSF, which means that DSF had not followed the procedure established in this article. Furthermore, applicant noted that DSF had not recorded all his study results.

Article 5.5 of the Code of Conduct came into effect on 1 June 2013 (start date of the Modern Migration Policy Act). Therefore, only the applicant's study progress in the first following course year (2013-2014) was relevant for this application. According to the presented 'list of study results' applicant made a study progress of 3.5 EC in the course

year 2013-2014, whereas for that course year a proportional nominal study load of 29 EC applied. Therefore applicant made insufficient study progress, as measured by the standard of article 5.5.

The difference of opinion between applicant and DSF about the correctness of not recording 5 EC for activities in relation to the compulsory work placement in the course year mentioned, does not make a difference since the total number of EC gained would still be insufficient.

Applicant's position regarding the incorrect omission of DSF of study results after 1 September 2014 cannot be upheld, since de-registration by DSF concerned the course year 2013-2014

Subsequently, the National Commission had to assess whether DSF tried to establish the reasons for insufficient study progress, and whether it had satisfactorily taken into account applicant's personal circumstances, which might have given reasons not to notify the IND as meant in article 5.5 of the Code of Conduct.

On the basis of the documents presented by DSF and the applicant, the National Commission observed that both parties had several conversations about the reasons of the insufficient study progress. Because of this, DSF adopted the view that no excusable reasons existed, as meant in article 7.51 of the Dutch Higher Education and Research Act and article 2.1 of the Implementation Decree Higher Education and Research Act. Therefore DSF had the obligation to de-register applicant with the IND according to article 5.5 of the Code of Conduct. Although in the opinion of the National Commission DSF could have been more active in supporting applicant, the reasons of lagging study progress lie in the choices applicant made and in his own behaviour. Therefore it could not be established that DSF was unreasonable in its assessment of applicant's personal circumstances and as such in lacking to state excusable reasons as meant in this. To that extent the application was dismissed.

5. DECISION

The National Commission upheld the application, to the extent that the application pertains to violation of article 4.6 of the Code of Conduct. Furthermore, the National Commission noted that not signing the earlier mentioned statement of consent might be attributed to the transition period of both course years, in which several new regulations came into force at the same time. The National Commission also took into account that article 4.6 mentions registration, without making clear if this includes renewal of registration. For that reason the National Commission did not attach consequences to the violation of article 4.6.

The National Commission dismissed the application, to the extent that the application pertains to alleged violation of article 5.5 of the Code of Conduct.

The National Commission declared the application inadmissible to the extent that the application pertains to the alleged violation of article 5.6 of the Code of Conduct.

ir. J.E.J. van Bergen, chairman, Mrs dr. M.S. Menendéz, ir. F. Kuipers, drs. P.M.M. Rullmann and dr. J.A. Dop, members, in the presence of Mrs J.G. van den Bosch MA, official secretary and mr. dr. A.G.D. Overmars, acting examiner.

Done in Amsterdam on 18 November 2015,

Ir. J.E.J. van Bergen
chairman

Mrs J.G. van den Bosch MA
secretary

Sent on 20 November 2015.