



Not Queer Enough?

The imposition of a western cultural understanding of ‘queer identity’ on
the credibility of asylum seekers’ LGBTQ status in the Netherlands

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Abstract

Asylum seekers persecuted for their sexual orientation are expected to use only their *asylum narrative* to prove persecution faced and their legitimate LGBTQ status. After a comprehensive review of the literature on factors affecting LGBTQ asylum credibility, this research looked specifically at the situation in the Netherlands. Synthesizing queer literature on the cultural understanding of ‘queer identity’ in the western context, this thesis has *identified the logic used by the ‘Immigratie en Naturalisatie Dienst’ [IND] to decide which narratives are legitimate, to see how the cultural understanding of sexuality plays out in asylum decisions and the appeals court.* Through analysis of three court cases, it was concluded that the expected narrative by the IND is of a struggle with same-sex attraction, self-realisation proceduralised through moment(s) of realisation and a coming out that leads into a stable, self-actualized identity, able to be discussed in affective rather than sexual terms. This relates to queer scholars’ writings on queer identity formation and the dominant discourse in the Netherlands that presents sexual identity as fixed, self-actualized and publicly demonstrated. This thesis attempts to undermine the assumption that all legitimate LGBTQ asylum seekers are able to present this specific understanding of queer identity in their asylum narrative.

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Introduction

“It’s like asking people to come to the Netherlands and describe Hagelslag [Dutch chocolate sprinkles] to a Dutch person without ever having seen it in their lives” - COC Employee October 2017

It’s almost impossible to fully comprehend the realities that asylum seekers experience: the persecution faced at home, their journey to a new country and the complexities of arriving in a foreign country. Now imagine, beside all the other hurdles faced, how you would prove that you have been persecuted for your sexual identity if the only tool you have is your voice? How do you prove that you’ve faced “sufficient” fear of persecution and that you are genuinely part of the LGBTQ community? What if you’ve never openly been part of any LGBTQ community, or you’ve never identified with any terminology that defines your sexual orientation; but have still faced persecution for your non-heterosexuality? How will you be able to present a readable narrative to the interviewer, when it is almost impossible for the interviewer to fully comprehend the realities you’ve experienced?

This thesis will first set the context of the LGBTQ asylum procedure in the Netherlands, and then look into international and Dutch asylum law to establish how the Dutch government decides who is a legitimate asylum seeker. Given the focus placed in the procedure on the asylum narrative, told in a series of interviews, this thesis will then outline factors that affect whether the applicant presents a credible LGBTQ asylum narrative in the interview. Using queer theory, I will outline who is a legitimate queer subject in the western context to relate this to the logic used by the Dutch government to assess who is a legitimate LGBTQ asylum seeker. Through this I aim to investigate whether the Dutch asylum process imposes a western ideal of queer identity on individuals applying for asylum on the basis of their sexuality. Are only those that fit into the Dutch asylum interviewer’s cultural understanding of LGBTQ identity believable? Is the current system asking LGBTQ asylum seekers to describe a form of ‘being LGBTQ’ that they do not have an understanding of, to someone who is equipped with all the tools to discern genuine from ingenuine LGBTQ asylum seekers based on their own worldview?

Armed with these questions, I went into the field to conduct participant observation in three Court Cases in Amsterdam. This thesis will first examine my positionality and limitations of the research situation, and then analyse the ‘working instructions’ that the interviewers and lawyers base their arguments on. Through this, I aim *to identify the logic used by the ‘Immigratie en Naturalisatie Dienst’, [IND - Immigration and Naturalisation Services] to decide which stories are legitimate, to see how the cultural understanding of sexuality plays out in asylum decisions and the appeals court.*

Relevance & Scope

Much research has been, and is currently being, conducted on the LGBTQ asylum in Europe. In the Netherlands, scholars such as Thomas Spijkerboer (2011; 2016; 2017) Sabine Jansen (2013), Spijkerboer and Jansen (2012; 2012b), Maarten den Heijer (2014), Jose Renkens (2017) and Stefan Kok (2015; 2016) have led research on this topic, mainly in the field of law. However, the anthropological perspective appears to be lacking in this field, and this thesis aims to pursue this line of research.

Furthermore, although the asylum process has been analyzed and debated, the cultural understanding of sexuality within which this process exists and is acted out, have never been explicitly researched. I can therefore claim that this is the first time the western perspective on what it means to be a ‘legitimate queer’ is critically analysed and compared to asylum process acted out in the appeals court. I aim to bring together two fields of literature in my analysis: literature on what makes a credible LGBTQ asylum seeker, and queer theory on what it means to be non-heterosexual in the western context.

Throughout my research I’ve also come to notice that this is an up-and-coming topic in asylum law in many countries in Europe currently. In October 2017, the *Out and Proud? Conference* was hosted in Amsterdam and brought together scholars from all over Europe to discuss issues of credibility, representation and other challenges for LGBTI asylum seekers. In the Netherlands, this issue has recently gained traction in the media through activists such as Sandro Kortekaas from LGBT Asylum Support who sent a petition (#notgayenough) to Dutch parliament in April 2017 (Jansen, 2017). This, together with the recent appearance on the NOS in November

2017 (“Asielprocedure voor homos”, 2017) shows that this topic is currently very relevant in the Netherlands.

A few concepts need to be defined before beginning this thesis. I will refer to the ‘community’ of those with non-heterosexual and cisgender identities with the inclusive acronym LGBTQ, which stands for Lesbian, Gay, Bisexual, Transgender and Queer. I have chosen to include the word ‘queer’ because, despite the historical derogatory connotation towards LGBTQ individuals, it has been reclaimed as inclusionary terminology and as a form of resistance against former stigmatization of the term (Weeks, 2012). ‘Queer’ will be used in this thesis as an inclusive term for the LGBTQ community, and this way I hope to be more inclusive to sexual identities that fall outside the homosexual/heterosexual dichotomy.

Due to time constraints and the difficulty of accessing this community, this thesis will not delve into the complex topic of gender identity. I would like to recognize here that trans, intersex, non-binary and other non-cisgender people face their own unique challenges in being recognized as credible LGBTQ asylum seekers (Milan, 2017). An interesting extension of this research would be to conduct a similar analysis on how this plays out in terms of gender identity.

Similarly, there appears to be a significant lack of research into the bi+ community, including pansexual, bisexual, queer and fluid identifying individuals, and the unique biphobia and other challenges they face in the asylum process (Rehaag, 2008; Rehaag, 2009; Wagner, 2016). I originally aimed to do research into this community, often marginalized even within the LGBTQ community (Weiss, 2004), but due to similar issues of accessibility was not able to do so. Women are also underrepresented in studies on sexuality, however this is improving with the increased awareness of the fluidity of female sexuality (Better, 2014).

The scope of this thesis will therefore be limited to cisgender, monosexual identities, looking specifically at three cases including two self-identified homosexual males, and one lesbian woman.

Context

Asylum Seekers in the Netherlands

The Netherlands, a country with a population of about 17.1 million (CBS, 2017), had 101.744 refugees by the end of 2016, and another 10.411 asylum seekers awaiting the decision of their asylum request (Vluchtelingenwerk Nederland, 2017). Almost 70% of asylum applicants in the Netherlands in 2016 were male, and 34% came from Syria (ibid.). Whilst exact statistics on LGBTQ asylum seekers in the Netherlands are not currently available, 33,7% of asylum applications in 2016 fell under ‘*a-grond*’, which are applications on the basis of membership of a particular social group, political affiliation, religion, race and nationality (ibid.). Although it is an outdated statistic, the *Fleeing Homophobia Report* published by Jansen and Spijkerboer in 2011 claimed that homosexual and transgender asylum applications amount to approximately 200 every year in the Netherlands (Spijkerboer, 2011).

The Netherlands is often considered a very progressive and accepting society for LGBTQ individuals, and was the first country in the world to recognise homosexuality as a ground for asylum (Jansen, 2013). In the Netherlands, homosexuality was recognised as a basis for an asylum claim in 1981 by the ‘Raad van State’, the Dutch Council of State (Jansen & Spijkerboer, 2012). In 2011, gender identity was formally recognized as a basis for asylum claim by the European Union (Publicatie Europese Unie, 2011).

The Asylum Procedure: Immigratie en Naturalisatiedienst

Upon arrival in the Netherlands, individuals wishing to seek asylum must report to the immigration service at Schiphol airport, or the central asylum reception in Ter Apel. Once the application is filed, the asylum seeker is given 6 days to rest before the initial hearing with the Naturalisation and Immigration Service [IND]. Before the initial hearing, the applicant is also given a medical exam, during which they must indicate any physical or psychological ailments that the IND must take into consideration during the interviews. The first hearing is more general, concerning the applicant’s basic personal details and migration route. (Wat houdt de asielpprocedure in, n.d)

The applicant then usually stays in a temporary refugee camp, Asielzoekerscentrum [AZC], to await the start of the eight day asylum procedure. During all hearings and interviews, there is an independent translator present. On day two, the applicant meets with their lawyer, reviews the

transcript of the first interview for errors, and prepares for the subsequent second interview. The second interview, on day three, will go into detail about the exact reasons for asylum, and be used to corroborate the details of the other interview. After the applicant reviews the transcript for this interview with their lawyer, the IND files a decision on day 5. If rejected, the applicant can apply for a ‘review’, which is granted or rejected within two days. If still rejected, the applicant can then go into higher appeal. (Asielzoekers, n.d.)

LGBTQ Asylum Legal Principles

To be considered a *refugee*, as defined by Convention Relating to the Status of Refugees (1951), the individual must have a *well-founded fear of persecution*. According to international refugee law an individual seeking refugee is considered an *asylum seeker* until their well-founded fear has been approved by the State (Gibey, 2004). Because of the possible political implications of this, some scholars would consider an individual a refugee as soon as they leave their country in search of protection (ibid.). An individual must prove that the violation of their human rights at home, is bad enough for it to warrant the protection of their human rights in a host country (Spijkerboer, 2017).

Individuals claiming refugee status on the basis of their sexuality fall under the *membership of a particular social group* (Spijkerboer, 2011). This was clarified by the UNHCR in 2002, when they defined a *social group* as sharing common characteristics that are “innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one’s human rights.” (United Nations High Commissioner for Refugees, 2002b, p. 3). This definition is problematic and contentious in LGBTQ asylum, as it uses the essentialist argument that sexuality is “natural, inevitable and biologically determined” (DeLamater & Hyde, 1998, p. 10), which queer theorists have endeavored to deconstruct. This definition allows for asylum on the basis of sexuality “as long as their sexual orientation is immutable and fundamental to their identity” (Akin, 2017, p. 459). Furthermore it requires an LGBTQ applicant to identify with the ‘community’ (Southam, 2011).

The asylum applicant must prove that they have a *well-founded fear of persecution on the basis of their LGBTQ identity*. This is difficult however, partly due to the skepticism that is inherent in asylum cases. Article 11 of the Universal Declaration of Human Rights guarantees the right to

the presumption of innocence, but asylum seekers are often approached with apprehension, suspected of misusing the asylum system for migration instead of the need for genuine protection (Akin, 2017). Therefore, different argumentation is applied in which the applicant themselves must prove that they are genuinely who they claim to be, and in need of protection, placing the burden of proof on the asylum seeker and rendering them ‘guilty until proven innocent’ (ibid.). Whilst this is the case in all asylum seeker cases, this is especially burdensome for individuals claiming persecution on the basis of their non-heterosexuality because of the difficulty in ‘proving’ this internal identity. (Dauvergne and Millbank, 2003) In asylum cases on the basis of sexuality, the focus subsequently falls on firstly the *genuineness of the LGBTQ status*, and secondly on *sufficient fear of persecution* faced in their country of origin (Akin, 2017).

1) Sufficiently Well-Founded Fear of Persecution...

The question therefore follows, when can an individual be judged to have faced sufficient persecution in their country of origin? The requirement of ‘well-founded fear for persecution’ lacks standardized procedure in the European Union, but Dutch case law and legislation provides a clearer image for applicants in the Netherlands.

When same-sex sexual activity is criminalized in the country of origin, proof of LGBTQ identity should be enough to grant refugee status within the Netherlands as it is an infringement on their human rights (Spijkerboer, 2011; Spijkerboer, 2017). However, Thomas Spijkerboer and Sabine Jansen (2012) found that Dutch case law shows that the criminalisation of same-sex sexual activity, which is the case in 78 countries in the world, is not enough for an individual of that country to be a refugee in the Netherlands. Rather they must demonstrate a “concrete fear of persecution” (Spijkerboer & Jansen, 2012, p. 327).

Generally in refugee law, the applicant is expected to have invoked state protection against non-state persecution before fleeing their country but this is often not possible for LGBTQ individuals because of homophobic/transphobic state authorities. In the Netherlands, in July 2009, this requirement was abolished for LGBTQ applicants when same-sex sexual activity is criminalised in the country of origin (Spijkerboer, 2011). Some countries are specifically referred to in the guidelines; including Afghanistan, Iraq, Sierra Leone, Sri Lanka and Syria (ibid.).

Even if same-sex sexual activity is not legally prohibited, it could still be persecuted and the LGBTQ individual not reasonably expected to turn to homophobic or transphobic authorities for protection. In these cases, the Netherlands appear to work largely on a case by case basis, assessing whether or not seeking protection “would have been clearly dangerous or pointless” (Spijkerboer, 2011, p. 30). If not, the individual is expected to have sought state protection, and if the state appeared unable or unwilling to protect the individual, the application is looked at (ibid.).

According to a Movisie report, demonstrating purely ‘homosexual feelings’ is not enough to get residence permit, but the procedure rather looks at individual circumstances in the country of origin (Elferink & Emmen, 2016). This is especially clear when analysing the language used in *Werkinstructie 2015/9* (‘working instructions’), which are guidelines for the IND officers used in the assessment of asylum cases in which ‘LGBT-orientation’ is stated as the motive. It establishes both the line of questioning and how to establish credibility of the asylum narrative. The *werkinstructie* looks at each individual case according to the (threat of) persecution and fear of harm if they were to return and point 2.2.4 states that discrimination, repression and persecution has been both experienced in their country of origin, and is feared upon return (Immigratie- en Naturalisatiedienst, 2015).

In the European Union, the *discretion requirement* is used by some countries to claim that the individuals can safely return if they remain discreet about their orientation. This would involve LGBTQ individuals ‘staying in the closet’ because ‘coming out’ would provoke possible persecution. This requirement was unique to LGBTQ applicants, since those seeking asylum on the basis of their religious, political or identity were not expected to hide their group membership upon return, in order to avoid a well-founded fear of persecution (Spijkerboer, 2016) In the Netherlands, this requirement has been officially rejected by authorities, showing good practice in formal policy (Heijer, 2014). However, in practice it has been found that whilst discretion cannot be normatively *expected*, if there is enough reason to believe that the applicant *will be* discrete about their LGBTQ orientation upon return of their own accord, there is not enough grounds for persecution (Spijkerboer, 2016). According to Spijkerboer (2017), when asked whether they will hide their identity on return, most asylum seekers will answer yes due to homophobia in the country, but this still allows the immigration officers to reject cases on the basis of discretion.

Therefore, discrepancies between policies and practice mean that legitimate LGBTQ individuals can still be sent back on the basis of not providing enough ‘well-founded fear of persecution’. However, proving a sufficiently well-founded fear of persecution is relatively easy to regulate in policy, whereas assessing the *genuineness of LGBTQ status* as proof of belonging to a particular social group, has proved more controversial.

2) ... on the basis of their LGBTQ status

How does one prove that one is genuinely part of the LGBTQ community? This question is very complex and there is even less consensus in Europe concerning this issue. In the Netherlands, the credibility of the LGBTQ asylum seeker is based largely on the werkinstructie from 2015/9, which serves to act as a guideline to the IND interviewers, lawyers representing the State in appeal court cases, asylum lawyers and judges in order to establish some form of uniform practice in assessing credibility. The werkinstructie claims to work under the assumption that the provability of sexual orientation and gender identity falls somewhere on a continuum between the mere claim to be LGBTQ, and concrete physical proof (Immigratie- en Naturalisatiedienst, 2015). Because of this, believability is based on the applicant’s claim substantiated with *consistent and realistic narrative evidence*, through the prompt of questions by the IND interviewer (ibid.). What constitutes consistent and realistic narrative evidence will be explored in the following literature review on factors affecting the credibility of LGBTQ asylum seekers. According to the UNHCR guidelines, self-identification should be taken as the starting point, and the individual should be given the benefit of the doubt when personal testimony does not seem completely credible (United Nations High Commissioner for Refugees, 2008).

Current discontent in the Netherlands

Recently there has been increased attention brought to the asylum interview process of LGBTQ individuals in the Netherlands, specifically criticisms of the method of assessing the credibility of the *asylum narrative* and LGBTQ identity (“Asielprocedure voor homos”, 2017). Activists working for the Dutch organisation LGBT Asylum Support have recently brought this issue to the media and State Secretary in the Netherlands with their petition #nietgaygenoeg (Niet gay genoeg, 2017). The petition claims that too many genuinely LGBT individuals are refused a residence

permit in the Netherlands on the basis of “recapitulatory and vague arguments”, and that IND too rarely changes their decision in the appeal process (ibid.). Sandro Kortekaas, LGBT Asylum Support Chairman, claims that the number of cases has increased from a total of 70 in 2016, to 90 by October 2017 (Rainey, 2017). Kortekaas claims that the current system is unfair and inhumane, and rejects too many people when “95 percent I’m really sure are gay” (ibid.). Activists claim that this is because of the previously mentioned ‘werkinstructie’ introduced in 2015 that places new emphasis on the applicant’s explanation of their inner process of realisation that places unreasonable and unfair expectations on the applicant to articulate a part of themselves so personal (Niet gay genoeg, 2017).

This, coupled with a *culture of disbelief* and skepticism about people misusing the asylum system, is causing genuine refugees to be denied (Rainey, 2017). Scholar Sarah Brennan (2016), refers to this as the *specter of the fraud*, the applicant “who lies about their experiences in order to take advantage of European welfare systems and economic opportunities” (p. 77). She states it is this *anxiety over the fraud* that has brought the focus to discerning authentic LGBTQ status (Brennan, 2016). Given this increased attention brought towards the impossibility of proving your sexuality, it is especially important now to assess how the credibility of asylum seekers is affected by the credibility of their asylum narrative within the actual interview themselves. As Brian Lit, the attorney on many recent LGBTQ asylum cases, stated, “at the moment it just comes down to how one [IND] officer sees it [during the interview]. It’s just a matter of opinion” (Rainey, 2017). Thus the interview and questioning process is an important focus, given that the burden of proof comes down to convincing the IND officer in the two main interviews, of their identity.

Literature Review: Factors Impacting Credibility Assessment in LGBTQ Asylum

In the Netherlands, and some other European countries, criticism of the LGBTQ asylum procedure has shifted towards complete reliance on credibility assessment, after the abolishment of the discretion requirement (Spijkerboer, 2011). This begs the question, how does someone tell a convincing enough asylum narrative to be seen as credible by the IND interviewers? This question has been analyzed by scholars, who have outlined a variety of factors that impact credibility assessment amongst LGBTQ asylum seekers. This section of this thesis consists of secondary

research using scholarly articles, personal communications and information received at the Out and Proud? Conference in Amsterdam in October 2017.

Ability to Tell Consistent Narrative

Reluctance to Reveal Identity: Late Disclosure

In the past, *late disclosure* of sexual orientation as the ground for applying for asylum has been used against applicants to discredit their stories. In the Netherlands, it “should not work against them that they have not declared their sexual orientation earlier” (Immigratie- en Naturalisatiedienst, 2015), but the IND officers are allowed to ask the applicant why it has taken them until a later interview to reveal their orientation. The UNHCR has reiterated this point when stating that “even where the initial submission for asylum contains false statements, or where the application is not submitted until some time has passed after the arrival to the country of asylum, the application can still be able to establish a credible claim (United Nations High Commissioner for Refugees, 2008).

According to the Fleeing Homophobia Report, the asylum seeker might have many reasons for not revealing their sexuality or gender identity in the initial interview, including feelings of shame or guilt caused by internalised homophobia, or a fear of coming out to an figure of the state caused by past experiences of persecution by the state authority (Spijkerboer, 2011). Berg and Millbank (2009), discuss the reluctance of LGBTQ individuals to reveal their group membership due to the nature of the identity being invisible, and therefore “likely to be experienced for some time in isolation and secrecy” (p. 198). Disclosing one’s identity may be dangerous in particularly repressive societies, as well as difficult due to the invisibility of the queer community and consequent lack of possibility to seek out people they identify with (ibid.).

External Consistency: Knowledge about Country of Origin

Firstly, the IND interviewers base the credibility of the applicant’s asylum narrative on how *externally consistent* it is the information available to them in country of origin reports compiled by the Ministry of Foreign Affairs. The UNHCR’s Gender Guidelines has also stated that when these are not available or statistical reports are unreliable due to underreporting, written or oral testimonies in the form of NGOs and international organisations may also be used (UNHCR 2002).

The Fleeing Homophobia Report (Spijkerboer, 2011) found that often a lack of information seen as sign that the country situation is safe for LGBT individuals. However, Dutch courts have found that lack of information is not a good enough reason to claim that the country of origin is safe to return to and reports can be limited due to taboo of the topic in the country (Beddeleem, 2017). For example, a case in 2005 found that there was a lack in reports on transexuality in Azerbaijan because transexuality is taboo subject, but this did not mean that the country was safe. The court found that the applicant can still claim asylum despite the lack of reports (Spijkerboer, 2011). Another example is that, scholars have found a lack of reported human rights abuses against lesbians in the country-of-origin reports used, which decision makers have equated with a lack of persecution present in the country (Lewis, 2014; Berger 2009).

The applicants themselves are also expected to have knowledge about the country of origin consistent with the knowledge of the interviewers. It has been found that applicants are expected to know the specifics of criminal sanctions against LGBTQ individuals in their country of origin (Spijkerboer, 2011). This however, places unrealistic emphasis on formal sanctions, when often informal social sanctions are much more prominent in the individual's reality of persecution (ibid.).

Internal Consistency: Mental Health, Trauma and Memory

Given the importance of the applicant's ability to be able to tell a consistent, coherent *narrative*, the unique psychological aspect of LGBTQ asylum seekers must be considered. According to the Netherlands centre for social development, Movisie (Elferink & Emmen, 2016), "the most important problems that LGBT's with a 'flight story' experience is psychological problems" (p.17), caused by traumatic experiences in their past, rejection by family and negative experiences/discrimination since arrival in the Netherlands. This results in LGBTQ asylum seekers being at higher risk for PTSD and depression (ibid.). LGBTQ asylum seekers may also be dealing with mental illnesses as a result of "grappling with their identity" (Berg & Millbank, 2009, p. 201). Importantly for the interview process, PTSD and depression have been associated with overly generic memory and difficulty recalling both traumatic events and specific non-traumatic details (Herlihy & Turner, 2007). Specifically autobiographical memory has been found to be lacking in asylum seekers with symptoms of PTSD and depression, which is the type of memory the IND

interviewers rely on to establish credibility (Graham, Herlihy & Brewin, 2014). The Movisie report (Elferink & Emmen, 2016) found that LGBTQ asylum seekers staying in centers awaiting their decisions showed high levels of stress, fear and sleeplessness, which could all affect their ability to both concentrate and tell a coherent story in the interviews.

Internalized Homophobia

Berg & Millbank (2009) discuss the implications of the asylum seeker having lived their entire life on concealment strategies and ‘passing as straight’ in their country of origin. They describe how negative stereotypes are internalized and this complicates development of self-assured and integrated identity, and consequently also the ability to speak of this coherently (ibid.). LGBTQ asylum seekers originating from homophobic countries may adopt strategies to evade the stigma by renouncing their sexual orientation, and external markers of this, to both themselves and people around them (Troiden, 1989). This leads to the applicant perhaps referring to their own sexuality and sexual experiences with denial, ambivalence or homophobic terminology. Berg & Millbank (2009), even found that some applicants in Australia referred to their sexuality as problem, given that they have spent their lives passing as heterosexual in the context of a homophobic environment. However the adoption of these ‘passing’ strategies expressed as homophobia towards the self worked against the image of the LGBTQ-identifying individual expected by authorities (ibid.). Beddeleem (2017), discusses how a former life of hiding, hypocrisy and paradoxes might cause homophobia to be embedded in the applicant’s attitude and stop them from presenting the verifiable facts looked for by the interviewers.

Culture of Reflection

As discussed above, applicants might lack the vocabulary expected of them to talk about their sexuality, due to the persistence of homophobic language in their country of origin when discussing LGBTQ issues (Berg & Millbank, 2009), but this could also be caused by a difference in a ‘culture of reflection’. Berg & Millbank (2009) propose that perhaps applicants will only ever have talked to a handful of people about their experiences or identity, and thus do not have the adequate terminology available to describe their experiences. Furthermore, they found that some applicants had not revealed information because “in their culture it was considered wrong to

discuss them” (ibid., p. 201). Renkens (2017) discussed how reminiscing is a western phenomenon that has taught children in schools and family upbringing to reflect on their own behaviour and identity. Renkens (2017) claims that reflection is a Western way of thinking about oneself and an asylum seeker cannot be expected to reflect on their sexual identity in the same way.

Fluidity of Story Construction

Renkens (2017) discussed at the Out and Proud? Conference on LGBTI Asylum in Europe how the western way of storytelling is a learnt phenomenon from fairytales, a linear way of experiencing time. Credible stories, must therefore follow a linear pattern, and stories are by nature a construction (ibid.). A story is fluid and will change depending on the audience to which it’s told, goal of the story and how often it has been retold. Therefore, not only is memory subjective, but storytelling is a fluid phenomenon and inconsistencies may arise naturally.

Issues of Power in Interview Environment

Unfit Bodies

The power balance between the interviewer and applicant is important to consider in terms of the environment created during the interview. Beddeleem (2017) has called both the interviewer and applicant *unfit bodies*, the applicant not able to reflect on the issues demanded of them by the interviewer: usually a privileged, white, straight, middle aged male unfit to check the genuineness of LGBTQ status. Essentially, the interviewer holds all the tools, in terms of vocabulary and knowledge, to assess the credibility of the applicant, leaving the asylum seeker with very little agency in the procedure. Firstly, the applicant’s lack of knowledge about procedure is problematic, and LaViolette (2004) found that some applicants don’t even know that their sexual orientation is a reason to seek asylum when they begin the interviews. The asylum seeker is often unprepared for the interview and doesn’t know how to prove their identity (Beddeleem, 2017).

Jan Beddeleem, a Belgian social worker with expertise in LGBTQ asylum, has discussed how interviewers are trained to uncover inconsistencies, lies and paradoxes in the asylum narrative, and know how to look for arguments to make a negative decision (ibid.). The irony is that someone who is not genuinely LGBTQ would be more likely to be consistent/coherent in their narrative than a potentially traumatized and unprepared LGBTQ individual. Beddeleem (2017) concludes

that interviewers are constantly looking for verifiable facts that the asylum seeker may avoid for their own safety, as giving exact dates and names may be a threat for their community at home.

Distrust

Given the state-sanctioned homophobia often experienced by applicants, the interviewers as representatives of the state may be distrusted, which impacts the ability of the applicant to tell a convincing asylum narrative. A Movisie research report (Elferink & Emmen, 2016) found that applicants in the Netherlands sometimes experience the interview environment as unsafe. Berg & Millbank (2009) found that the sexual orientation and gender of the interviewer is an important factor impacting the level of comfort experienced. For queer women, the presence of male strangers in the room impacted their level of comfort negatively (Lewis, 2014).

Lexicon of applicant vs. interviewer

The available lexicon, the words available to the individual to describe experiences, is culturally determined and contributes to the imbalance of power in the interview. The applicant may never have used words to describe their sexuality in the open, and thus does not have the required lexicon to describe what it means to be homosexual (Beddeleem, 2017). The applicant may acquire the lexicon when arriving in the host country, but using words to describe what happened to them years ago, with words learnt very recently can give off the impression that they are lying (ibid.). Some applicants rely on the repetition of a *container word*, such as 'lesbian' or 'gay', and this hinders their ability to give a detailed narrative of what how it feels to be queer to them (ibid.). The interviewer, however, has a glossary from an academic, often legal, background and hasn't been trained to simplify their glossary to understandable questions for the asylum seeker (ibid.).

Class is an important factor to consider in the credibility of LGBTQ asylum seekers. Lewish (2014) found that how well the asylum seekers could speak about their experiences was linked to class and social mobility. McKinnon (2009) looked at how women are positioned lower in class and the labour market than men and how this creates a barrier for credibility in female asylum cases. Lewis (2014) refers to this in how it explains why queer women (usually lesbian) are less able to speak about their experience and must adhere to gendered and classed standards of credibility set by male asylum seekers.

Interpreter

The interpreter is the intermediary between interviewer and asylum seeker, and thus has a very important role in the interview process (Beddeleem, 2017). The role of the interpreter is to remain impartial in translation, and keep the issues discussed confidential (ibid.). It has been found that applicants may be reluctant to come out to someone of same culture because they experience incongruence between their LGBTQ and cultural identity (Bhugra, 1997). Importantly, the lexicon used by the interpreter needs to be considered in terms of the credibility of the LGBTQ asylum seeker, as depending on background of interpreter, they may use different terminology, even depending on which region of the country they are from (Beddeleem, 2017). Exact translation of words can be difficult, such as gendered nouns or expression that don't exist in the language being translated to (ibid.). The asylum narrative may be misunderstood, over- (or under-) dramatized due to “negative connotation by virtue of the words chosen by a translator” (Berg & Millbank, 2009, p. 200). The taboo nature of non-heterosexuality might influence the accuracy of translation, as the interpreter must negotiate their own homophobia (Beddeleem, 2017). Lastly, the interpreter is much more aware of the reality that the asylum story is embedded in, and might omit small details which may contribute to the asylum seeker being read as non-credible (ibid.). Insufficient translation has been found to be an issue in LGBTQ asylum seeker cases (Akin, 2017). There are many more aspects related to the positionality of the interpreter in the interview setting (Poellabauer, 2004; Inghilleri, 2005; Merlini, 2009; Johnson, 2011) but this is unfortunately beyond the scope of this thesis.

Culturally relative concepts

Sex & Attraction

When discussing LGBTQ identity, it is important to discuss the distinction between concepts such as sexual identity and sexual acts. In the Netherlands, applicants are discouraged by the IND from talking about explicit sexual acts, and this will not be taken into account in the decision (Immigratie- en Naturalisatiedienst, 2015). It therefore naturally follows that the IND is looking for an asylum narrative that focuses on the vague concept of identity to show credibility. However, scholars have argued the focus should be on the persecution experienced as a result of the LGBTQ status, whether this is sexual orientation, sexual identity or sexual activity (Jansen, 2013).

In past LGBTQ asylum seeker cases, applicants were expected to vividly recollect and clearly articulate first encounters/experiences with someone of the same sex (Akin, 2017). However this is problematic since sexual experiences are combined with inner turmoil, confusion, dissociation, and even an unconscious or conscious attempt to forget, given the presence of internalized homophobia and confusion (Berg & Millbank, 2009). Although recollections of sex are no longer required in the Netherlands, Kagan (2002) discussed that concepts such ‘knowing your sexual attraction’ and ‘realisation’ are culturally relative, and somewhat ‘empty’ words to asylum seekers coming from different cultures. Furthermore, expecting the applicants to remember ‘first attraction’ to someone of the same sex is problematic because they might not have same conceptualisation of attraction (Diamond and Savin-Williams, 2000; Renkens, 2017).

According to Akin (2017), a method of translating one’s sexuality in the asylum process is focusing on sexual activity rather than sexual identity. Sex may be the only way the applicant has previously understood their sexuality, or an attempt to prove their identity because “a sexually active life is not just the determining aspect of sexual orientation, but also the sign that someone truly needs protection” (ibid., p. 468). However, this is problematic for the credibility of asylum seekers as speaking about sex is not recognized as evidence by the IND Werkinstructie (Immigratie- en Naturalisatiedienst, 2015).

Linear, Fixed, Self-actualized Identity

It has been found that the presentation of a fixed, and consequently biologically determined sexual orientation is advantageous in coming across as credible in the interview. In the Netherlands, a bisexual applicant was found to be not credible because he claimed that his LGBT status was not in his genes (Spijkerboer, 2011). Akin (2017), writes about the danger of the ‘born this way’ narrative, that has been pushed by LGBT activists in an attempt to gain recognition of non-heterosexuality as a something unchangeable and therefore in need to recognition and rights. Heterosexual marriage and past relationships with someone of the opposite sex have been found to work against the credibility of LGBTQ asylum seekers (Spijkerboer, 2011). Akin (2017) writes that the applicant is expected to present an internal identity with static and linear desire. Berg and Milbank (2009) found that a shift in identity labels during the interview process was interpreted as hesitation about one’s identity.

Berg & Millbank (2009) also discuss the expectation of a “linear formation and ultimate fixity of sexual identity” (p. 197), whereby the applicant is expected to apply for asylum when they reach “some higher state of self-actualisation” (ibid., p. 200). As criticized in the ‘Fleeing Homophobia’ Report, this strict ordering of non-heterosexual identity is dangerous as it reinforces heterosexuality as the dominant norm, whilst assuming that LGBTQ individual can fit into stable, fixed identities that are incorporated into the identity of the self when applying for asylum (Spijkerboer, 2011).

Politics of Visibility/Activism: Out & Proud!

Credibility as an LGBTQ identity is higher when the assumed ‘self-actualized’ identity is made public and put into practice. Firstly, there is an assumption that the applicant is ‘out’ and enacting their identity through knowledge of the gay scene, including bars and LGBTQ support organisations in the country of origin. Scholars have also found that ‘going public’ with one’s sexuality is a strategic method in order to become more readable as an individual that adhere to the “western style of loud and proud sexual identity” (Akin, 2017, p. 463). Lewis found that lesbian applicants combined both the expectation of being a lesbian activist and out sexual citizen in order to avoid deportation (Lewis, 2014). Lewis (2014) links this “imperative to be an openly gay - to be a sexual citizen” (p. 966) to neoliberal ideologies of sexual citizenship. Lewis (2014) continues by stating that the LGBTQ asylum claim must conform as closely as possible to the “narrative of the male political activist fleeing an oppressive regime” (p. 967). Murray (2014) found that engagement with the local queer community once arriving in the country of application, such as working for LGBT organisations, can help portray belonging to the LGBT community.

Ishikawa IND Model

Many of the factors mentioned above have been summarized by the Pink Solutions Report and conceptualized into the ‘Ishikawa IND Model’ (Luit, 2013) in Figure 1, based on a study done on the IND interview process. One of these factors, placed under ‘way of hearing/questioning’, is “insight into (cultural) differences of expression of sexual orientation and gender identity”. Whilst this was not explored further in the report, this leads me to question whether the asylum process,

and IND interviewers as actors in it, have enough insight into the culturally different expressions of sexual orientation?

ISHIKAWA IND MODEL:

Factoren die de uitkomst van de asielgehoren van LHBT asielzoekers beïnvloeden. Lijst is niet uitputtend. Vele andere factoren zijn eveneens van invloed.

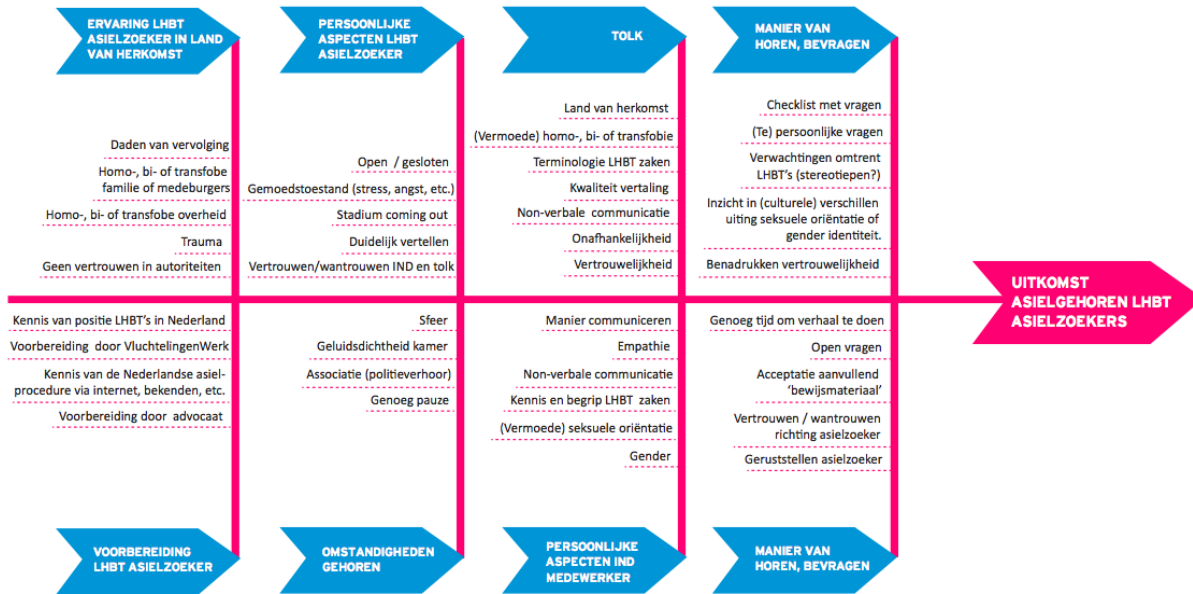


Figure 1: 'Factors that Affect the Outcome of Asylum Hearings of LGBT applicants', Luit (2013).

Whilst this has been speculated on by researchers, the literature lacks specific analysis into this topic. Noll (2006) also discusses the idea of the 'true identity' of the refugee, and how this must adhere to the idea of identity in the country in which the application is filed. Noll (2006) goes on to discuss how this identity is formed by the state, and its main 'protagonists', which in the case of the Netherlands could be considered the IND interviewers as the main agents of the state. Noll (2006) states that, "The credible asylum seeker is already a true refugee, and all the decision maker needs to do is to recognize him." (p.499). Millbank (2002), also mentions that the refugee's asylum narrative, and especially the parts relating to their LGBTQ identity, cannot challenge the *worldview* of the decision maker.

In the case of LGBTQ asylum, Millbank (2002) discusses how this worldview demands the applicant to have a fixed and linear identity. Lewis (2014) has discussed how LGBTQ asylum seekers are "expected to conform to western stereotypes of male homosexual behaviour based on

visibility, consumption and an identity in the public sphere in order to be considered worthy candidates for asylum” (p.962). Lastly, Akin (2017) speaks about how Western expectations of an openly LGBT lifestyle are placed on asylum seekers this causes them to “sustain the universalized and hegemonic understanding of a credible narrative of being non-heterosexual” (p. 469). Berg and Millbank (2009) further reference Millbank (2002)’s assertion that an asylum seeker is most likely to be recognized by the state when they looks like us, “or looks like what is being looked for” (Berg & Millbank, 2009, p. 277).

Given that the IND decision makers are situated within a western perspective of what a genuine LGBTQ identity is, the question must therefore be posed: *Does the IND impose western concepts of queer identity on asylum seekers*, and leading on from the activists’ claims of unrightful rejections of homosexuals, *could this explain why individuals are being wrongly rejected?* This thesis will concern itself with the first question, and focus on whether the IND imposes a western conceptualisation of queer identity. To answer this question, the western conceptualisation of queer identity must first be identified and unpacked.

Theoretical Framework

Queer Theory and Sexual Identity

Queer theory is the field that has emerged as a broadening of ‘Gay and Lesbian Studies’, and can be generally described as concerning itself with the fluidity of gender, sex and sexuality (Weeks, 2012). The field is itself dominated by scholars from Europe and the United States, although scholars have increasingly commented on queerness as a global phenomenon (Jackson, 2000). To avoid sweeping generalisation about ‘the West’, and consequently othering the non-West, this thesis will refer specifically to queer identity construction in the Dutch context whenever possible. However for the purpose of literature review, mainly Australian, European and North American scholars will be used due to a lack of research into specific Dutch conceptualizations of queer identity.

The essentialist view of sexuality is that it is either innate, or established early in life (Troiden, 1989). This view of sexuality legitimated non-normative sexuality in the civil rights era by depicting sexuality as not a choice but innate, therefore inherently deserving of equal rights (Vance, 1989). The social constructivist argument sees expression of sexuality as determined by

the cultural and social context in which it occurs (ibid.). According to Judith Butler's theory of *performativity*, gender and sexuality should be seen as performative: a stylized repetition of acts (Butler, 1988). This construction of sexuality as a performative act would suggest that various cultural constructions of sexuality exist and sexuality is not innate, or fixed, as argued by essentialist scholars. To discover the modern conceptualisation of sexuality in the west, it is important to analyze the scholars that have been prominent in theorizing queer identity in the literature.

Foucault's sodomite to species: from act to identity

Weeks (2012) states that there has been an emergence of *homosexual consciousness* at the end of the 19th Century, where individuals began to define themselves by their sexualities. Foucault refines this argument in his writings, 'The History of Sexuality', which are the foundation of the western perspective on homosexual identity as a fixed condition of the individual and is therefore very important to consider in this thesis. Foucault was the primary source of the constructivist school of thought on sexuality and can be considered the backbone of queer theory (Callis, 2009).

Foucault rejects the essentialist hypothesis of gender and sexuality, and rather claims that sexuality is "not a natural feature or fact of human life but a constructed category of experience which has historical, social and cultural, rather than biological, origins" (Spargo, 1999, p. 12). Michel Foucault (1978) in 'History of Sexuality', discusses how same-sex sexual activity transformed in the 19th Century from *sodomite* to *species*. Sodomy, being same-sex sexual acts, was "a category of forbidden acts; their perpetrator was nothing more than the juridical subject of them" (ibid., p. 43). Same-sex sexual activity was a habitual sin, or temporary abnormality in behavior, referred to as sodomy rather than the individual being a *sodomite* (Norton, 2016).

This changed in the 19th Century when the homosexual became a personage, "a type of life, a life form, and a morphology, with an indiscreet anatomy and possibly a mysterious physiology" (Foucault, 1978, p. 43). The focus went from Church regulation of abnormal behaviour to the administration of sexuality as an identity by state authority (Spargo, 1999). Foucault (1978) argues that 'the homosexual' became a complete identity, in the sense that everything in his 'composition' was affected by his sexuality. This coincided with the medical and psychological categorisation of homosexuality when it "transposed from the practice of sodomy

onto a kind of interior androgyny, a hermaphroditism of the soul” (Foucault, 1978, p. 43) and became a species.

The homosexual became a “scientifically determined condition of the individual” (Spargo, 1999, p.19) and became a negative construction in the 20th Century. The homosexual became a deviance to the heterosexual norm, able to be treated back into normalcy through disciplining and marginalisation (Spargo, 1999). The Foucauldian model of queer identity has been criticized for focusing both on the experiences of males in the West, and not recognizing the cultural difference in constructions of sexuality in non-Western contexts (Jackson, 2000). Given that Foucault has been so influential, this criticism should be extended to other western theories on queer identities, to question whether they can reflect non-western cultural constructions of sexual identity.

Linear Identity Formation: coming out and the self-actualized identity

Scholars of queer theory have conceptualised the formation of queer identity in a staged, linear fashion, with the ultimate goal of self-actualisation and inclusion of sexual orientation into the the integrated sense of self (Cass, 1979; Troiden, 1979, Savin-Williams, 1989). A very influential model of homosexual identity formation was suggested by Australian psychologist Cass in 1979, and summarises the linearity of identity formation through various stages. These stages are:

- 1) Identity confusion
- 2) Identity comparison
- 3) Identity tolerance
- 4) Identity acceptance
- 5) Identity pride
- 6) Identity synthesis

Cass theorizes that after internally questioning their own, and society’s, assumption of heterosexuality, there is some form of identity confusion (Berg & Millbank, 2007), which relates to Foucault’s discussion of the cultural assumption that homosexuality is in direct opposition to the heterosexual norm. The individual can then be expected to experience negative feelings towards the self, due to this opposition, and as the homosexual identity grows increased same-sex encounters occur (Cass, 1979 in Berg & Millbank, 2007). During the 3rd stage of tolerance, the individual can still be expected to experience a sense of isolation, employing *passing strategies* to

conceal the homosexual identity in a straight society (Berg & Millbank, 2007). Only at the 4th stage of acceptance, does the individual start to disclose their sexual orientation with others and seek direct contact with the LGBTQ community. Pride and synthesis of the identity into the 'self' is related to Foucault's conceptualisation of everything in the individual's composition being impacted by his identity as a homosexual (Foucault, 1978).

The model has been criticized as too rigid to take into account diversity of human sexuality, even in the western context (Bilodeau & Renn, 2005). This model was derived from Western experience and perspective and cannot be expected to align with the experiences of non-western sexuality (ibid.). Berg and Millbank (2007) discuss how the adoption of this linear model leads to the "misapprehension that there is a single path to one 'real' sexual identity" (p.210). Berg and Millbank (2007), claim that "over time, this psychological theory of sexual identity development has infused popular consciousness, shaping our cultural expectation of the 'natural' progression of sexual identity formation or standard 'coming out story'" (p. 207).

This thesis is going to examine whether the Dutch state is looking for the following elements related to this Cass' (1979) linear process of queer identity formation from applicants:

- Confusion of homosexual in opposition to heterosexual
- Expectation of a struggle: negative feelings towards the self, shame
- Coming out: disclosing it to other
- The self-actualized and integrated identity

The staged models have been criticized as eurocentric but were nonetheless extremely influential in the development of queer theory. Later models developed as alternatives to the linear model are the 'lifespan' approach theorized by D'Augelli (1994). While challenging the linearity of other models, it assumes the existence of six processes that operate independently towards queer identity. It takes into account the social context of the individual and possible separate development of personal and social LGBTQ identity (Bilodeau & Renn, 2005). This more recent model reflects queer theory that recognizes the fluidity of sexual orientation and "human growth is intimately connected to and shaped by environmental and biological factors" (Bilodeau & Renn, 2005, p. 28).

Both the linear and lifespan model conceptualize LGBTQ identity as integrated personally into the sense of self and as a social identity marked by coming out into the LGBTQ community (Bilodeau & Renn, 2005).

Identity Labels

Important in western conceptualisation of queer identity, is the terminology used to self-identify as part of the LGBTQ community. The term ‘homosexual’ was not used until 1869 (Schmitt & Sofer, 1992), and terminology to describe recognized, ‘knowable’ categories of sexuality has developed since then. Eliason (2014) refers to *sexual identities* as self-reflexive labels, used to identify oneself as belonging to a specific subcategory of queer which attempts to clarify sexual attraction, activity and other concepts of attraction. Eliason (2014) describes how this self-identification works under the assumption that the individual identifies with the LGBTQ community and takes ownership of that particular identity with its associated behaviours. Sexual identity labels have also been criticized by queer scholars as they “pin people down in both intended and unintended ways” (Esterberg, 1997, p. 170 in Eliason & Schope, 2007), and come with social expectations that may be undesired. Identity labels activate certain expectations of behaviours that fit the identity and some queer scholars argue for movement away from this towards the fluidity of identity labels (Katz-Wise, 2015).

The Public Queer Subject

Although the concept of ‘coming out’ was originally a form of protest against social repression, it has now become a prerequisite for participation in the LGBTQ community (Chabot & Duyvendak, 2002). Coming out is seen as a form of empowerment, beneficial to the self and society, whilst simultaneously creating a requirement to live one’s sexual identity publicly. Rassmussen (2010), claims that through the creation of this *coming out imperative* “the act of not coming out may be read as an abdication of responsibility, or, the act of somebody who is disempowered or somehow ashamed of their inherent gayness” (p. 146), once again alluding to the discourse of the essential nature of homosexuality. Therefore, non-heterosexual individuals are required to make their private identity public, before being seen as a legitimate part of the LGBTQ community. This was also discussed by Andeweg (Elferen, 2009), who described how homosexuals “do not become part

of the community by sharing the same secret others have, but instead by coming out, to be open about themselves, just like the other” (p.149). Therefore, through coming out, the individual can establish themselves as LGBTQ by publically identifying themselves with others in the community.

Through the Foucauldian lens of analysis, the imperative to openly confess one’s sexual desire can be traced back to describe the liberating effects of confession. Foucault (1967) discovery of the “shameful truth about sexuality” (Spargo, 1999, p.12) and the use of confession as discovering sexuality. In this sense, the speaker produced a narrative about their sexual acts which was constructed, and interpreted by a figure of authority and judged as sinful accordingly.

Queer Identity as Culturally Relative

The conceptualisation of sexuality in the modern western context can be contrasted to the reality of both the lived experience, and identity formation in other cultures. Schmitt and Softer (1992) even go so far as to suggest that the only common thread amongst homosexuality in different cultures is the physical act of sex. They state that sexuality “has different meanings in different cultures - so much so that it becomes difficult to find any common essence which links the different ways in which it is lived, apart that is, from the pure sexual activity itself” (p. iv-x). As discussed by Khayat (2002), “sexual identities were historically and culturally specific, that they were not universal, that they could differ substantively from what is presumed sexual in this culture” (p.493). Berg and Millbank (2007) discuss this in relation to LGBTQ asylum seekers, when they state that “in some cultures male-male sexual activity is not uncommon in early life due to heightened proscriptions on pre-marital heterosexual sex, leading to a clear disjuncture between cultural meanings attached to same-sex sexual activity and same-sex attracted identity” (p. 208). Continuing the Foucauldian line of social constructivist analysis, if sexuality is a “constructed category of experience which has historical, social and cultural” origins (Spargo, 1999, p.12), it can be expected that these categories have developed differently in the Netherlands than in other cultures.

The western conceptualisation of sexuality can be summarised as consisting of multiple elements: identifiable in stable categories using specific labels, fixed as an identity, formed linearly, visible/publically demonstrated through a coming out and self-actualized into the self.

The question is subsequently, if this is a culturally specific concept to the modern western world, how can asylum seekers from other parts of the world navigate this, and how are these ideas imposed on them during their attempts to be credible and readable as an LGBTQ asylum seeker in need of protection? This issue has been identified in Australian, Canadian and UK decision making bodies by scholars which criticize the assumption of a typical evolution of queer identity (Berg & Millbank, 2009; Lee and Brotman, 2011). This thesis will look at the Dutch decision making body, the IND, and whether it is imposing a culturally relative view of LGBTQ identity on the credibility assessment of asylum seekers.

Field Research: Participant Observation

I used participant observation and subsequent investigations into three specific cases of applicants applying for asylum because of the persecution they faced due to their sexual orientation. In order to achieve this, I submerged myself in the field of LGBTQ asylum through contact with various informants working on the cases, such as activists working for LGBT Asylum Support, lawyers working for the IND and volunteers working for organisations such as *COC Amsterdam and COC Limburg* [Dutch advocacy organizations for LGBTQ rights]. Through these informants I was able to attend three court cases of LGBTQ asylum seekers whose applications had gone into appeal on their originally rejected asylum case. At these court cases I also got the opportunity to further speak to various informants such as the judge on the cases, volunteers from Stichting Secret Garden, reporters and the lawyer representing the asylum seeker. I then used the decisions of the court, released typically one week to a month after the hearings, to further the investigation. Through contact with individuals working for the COC Amsterdam, I was also able to attend monthly meetup events organised by Cocktail Amsterdam, the organisation within COC Amsterdam that runs events for LGBTQ asylum seekers. Through this organization, I was able to interview two successful applicants about their application process, I also attended the ‘Out and Proud? LGBTI Asylum in Europe’ in October 2017 consisting of workshops by scholars from various fields on asylum narratives and issues of credibility in LGBT asylum law, hosted by COC the Netherlands.

I am aware that a direct investigation using the transcripts of interviews and actual questions asked to applicants would have been more a direct way to analyze whether the IND imposes a culturally specific understanding of ‘queer identity’ in their credibility assessment, but

this was not possible mainly due to a lack of transparency by the IND. The IND takes great care to keep the transcripts confidential, and the actual questions asked are not open to the public to prevent applicants from using homosexuality to falsely claim asylum (IND lawyer, personal communication, September, 22, 2017). Court hearings however are open to the public, and through the help of an IND lawyer I was able to identify cases concerning asylum for sexual orientation. I was able to obtain court decisions through the lawyers I was in contact with, one with permission of the applicant, and two others with the names, birth dates and case numbers blacked out to maintain confidentiality.

The analysis will therefore focus on the three cases for which I conducted participant observation (Bernard & Gravlee, 2014) in court and an analysis of the judge's decisions. I have attempted to bring an anthropological perspective to the judicial setting of the courtroom, and an asylum procedure that is so often analyzed from a rigid, legal perspective. This analysis includes a critical investigation into the werkinstructie 2015/9, given the emphasis IND lawyers appear to place on it in their defenses in court.

My role as researcher: positionality

As a bachelor student, educated in international human rights law, anthropology, criminology and social psychology, I went into this investigation with limited knowledge of the intricacies of Dutch asylum law, credibility assessment and the specific challenges existing in LGBTQ asylum process. Therefore I took on a role of learning through doing, mainly through asking many questions and attempting to understand and flesh out the various perspectives on this issue. Given my international, interdisciplinary education at University College Utrecht, I am able to bring a unique perspective to this issue that includes understanding of human rights law and criminal courts, but focusses on cultural understandings of identity from anthropological perspective.

My dual-identity as Dutch and Australian, and therefore bilingual in Dutch and English, enabled me to have conversations with individuals in the language most comfortable to them, allowing me to establish rapport with informants working for various organisations. This, of course, does not apply to the interview conducted in English with Arabic speaking asylum seekers. My Dutch language abilities turned out to be vital in achieving what I have, given that the court cases and decisions occur in formal, legal Dutch terminology.

Being white, Dutch and from upper-middle class background I need be aware of my own privileges and avoid falling into the trap of ‘othering’ the asylum seeker as the oppressed individual. Given that asylum decisions are not made in a vacuum, it is important to consider the discourse concerning homosexuality and migration in Islamic countries. The Netherlands has seen the rise of nationalism in combination with islamophobia (Ewing, 2008) whereby sexuality in the west is seen as progressive and contrasted with homophobia in Islamic countries, which are portrayed as ‘traditional’, stagnant, non-secular, resistant to change (ibid.). Brennan (2016) considers this framing problematic in terms of LGBTQ asylum seekers as they are an exception to anxiety over Muslim migration and a token of western tolerance of homosexuality. Asylum seekers are seen as the subversion of Islam, whilst the Dutch government is conceptualised as “white liberals are saving brown queers from brown men” (Brennan, 2016).

Part of my identity as a queer cisgender female, involves a personal understanding of struggling with forming a ‘sexual identity’, and subsequently can empathise with the position of the LGBTQ asylum seeker. Prior to writing this thesis, I was not familiar with queer literature, and I do not claim to have a comprehensive understanding of queer theory. I have rather attempted to identify multiple aspects that have contributed to my understanding of queer identity, and supported this with existing literature on queer identity formation and presentation in the Netherlands. Navigating my own queer identity within the research process was sometimes difficult as I myself was constantly negotiating whether or not it was safe, and appropriate, to come out or reveal my sexual identity to my informants in the field. I chose to keep my own sexual identity from my informants as I did not feel it was necessary to reveal it. While I could have used this as a tactic to establish rapport with my informants, I felt it was not necessary for me to adhere to the coming out discourse present in the Netherlands, because I have found coming out is not a common experience for asylum seekers.

As a researcher, I brought into the field with me my political views, which can be identified as left-leaning. Given my views on refugee policies and interest in activism, I was consequently have an empathetic gaze towards those who I believed are historically marginalized or oppressed under the administrative system represented by the IND. Whilst this interest is part of what inspired me to write this thesis, I do feel that my queer and progressive political identity have caused me to struggle to maintain impartiality in my investigation.

Specifically in my informal conversations with an official, I found our ideological differences difficult to overcome. Some statements made by the official made me uncomfortable, and would be considered by me as insensitive or even homophobic, although they were, most likely, not intended as such. Given the deeply personal nature of homophobia to me, I think this contributed to my critical perspective of the them as a representative of problematic discourses existent in our society that undermines attempts by LGBTQ individuals to be recognized and normalized. It is also important to recognise the positionality of everyone involved in the research situation. For example, I found that the government officials, although they try to appear above ideology, are of course not. Every agent has their own identity, and brings with them into the field their own subjectivities.

In most of my investigation I did not attempt to simply observe from afar, but I took rather a more investigative role, having many informal conversations with actors in the field. During these conversations, the constant negotiation of my identities is extremely important to keep in mind. It is the intersection of all of these identities that shapes me as the researcher in the field. I still hope to achieve some degree of impartiality but do not attempt to present an objective investigation.

Not only was I an active part of the research situation in the informal conversations, but during the court cases I was a passive observer, sitting in the gallery open to the public. During the case I made notes in my notebook and stayed silent, aiming to minimise the effect that my presence in the courtroom could have on the actors involved, and most definitely on the decision. However, I cannot claim with any certainty that my presence in the room did not affect the proceedings. The IND informant told me that when there is an audience present in court, he takes care to explain his arguments in layman's terms, not just for the ears of those who know the legal lingo but also to make himself understandable for the audience (IND lawyer, personal communication, September, 22, 2017). He did, however, emphasize that the simplified language should not impact the decision of the judge.

Limitations of this Research

Other than easily discernable limitations such as the time constraints preventing me from analyzing more cases, there are limitations of using courtroom as the research environment. The main

limitation of the courtroom is that the court case mainly shows how the IND defends their decisions, rather than how they test the legitimacy of LGBTQ status. It would be more direct to look at the details of the asylum narrative, but due to lack of transparency of the IND I did not have access to the transcripts. This makes it difficult to assess what made the narratives believable or not. However, it is still valuable to look at the logic used by the IND to justify their decisions and find common threads in what is looked for in the applicant.

It must be noted that the judge in the courtroom has very little power in changing the decision made by the interviewers. The judge essentially has to decide whether or not the IND followed the rules, and if this is the case, the appeal must be declined (Judge Rechtbank Amsterdam, personal communication, September, 22, 2017). However, in an informal conversation with the judge about two cases, she explained that the aim of the court case is to test whether the IND made the right decision, given the way the applicant told their story. She said that if they are not able to express themselves, or do so vaguely, the IND will have rightfully rejected them, even though they could still be genuinely LGBTQ (Judge Rechtbank Amsterdam, personal communication, September, 22, 2017). Therefore it could be that the IND wrongly rejects an LGBTQ person despite doing everything right by Werkinstructie.

Thus I can't draw conclusions about whether the asylum seekers were rightfully rejected or not. I can only point out whether the elements the IND looks for and the reasoning used in court have commonalities with the hegemonic discourse on sexual identity in Dutch society. This is why the Werkinstructie is important when analyzing whether the IND imposes a specific cultural understanding of queerness on the applicant.

Analysis of Werkinstructie 2015/9

There was an extreme focus placed on Werkinstructie by IND lawyers to legitimate the logic used to determine an applicant as genuinely LGBTQ. The Werkinstructie lays down in law the reasoning used by the IND to assess credibility of LGBTQ asylum seekers and given that the interviewers rely on their interpretation of the asylum narrative presented, the Werkinstructie itself needs to be analyzed.

Methods of credibility inquiry excluded

The IND has explicitly excluded a few methods of inquiry outlined in the Werkinstructie 2015/9 point 2.1. Firstly, the IND does not conduct any medical tests to establish sexual orientation, and any ‘medical evidence’ will not be considered in the decision. This is in accordance with the Yogyakarta Principles of international law, which dictates that sexual orientation and gender identity is not subject to medical including psychological tests (Immigratie-en Naturalisatiedienst, 2015). The IND does not accept documentation (such as photos and videos)¹ as evidence, and thirdly does not take testimony about explicit sexual acts into account in the decision. The exclusion of physical evidence, although originally with good intentions, is currently criticized for relying entirely on the interpretation by IND officers of the credibility of the personal *asylum narrative*, on the basis of prescribed questions.

What questions are asked?

Werkinstructie 2015/9 is based specifically on an article by Nicole LaViolette (1996) on questioning a claimant in their ‘membership of a particular social group’, where she states that where is no tangible proof of sexual orientation it comes down to whether the individual tells a good enough, believable story. LaViolette attempted to develop an adequate model to “elicit a claimant to speak about his or her experience of homosexuality” (ibid., p. 15). This model is based on three underlying assumptions about the universal experience of LGBT individuals despite diverse personal experiences around the world.

- 1) Societal rejection of homosexuality
- 2) Personal struggle with sexual identity faced by individuals in social rejection

¹ Much current criticism rests on the fact that physical evidence is not taken into account in assessing credible LGBTQ identity. Activists are advocating for the IND to include photographs, message exchanges between partners or a declaratory letter of any current relationships. In Rian’s case (see page 36), the lawyer claimed that the evidence should be considered together with the personal testimony to paint a picture of the individual as legitimately LGBTQ. However, the IND declared that these can only be used to build case, not prove a case when there is no doubt that the person is not legitimately LGBTQ. The court did not agree that Whatsapp messages, pictures of himself and his finance, letters from family, friends, activists are not objective and this contributed largely to why Rian’s appeal was granted. The Court declared that the documents shows a relationship between Rian and his fiancé and that if the IND still doubts this they should investigate the relationship further and come with new decision. This was a very important decision in Dutch LGBTQ asylum law, as it appears to move away from the Werkinstructie 2015/9 and from complete reliance on personal testimony.

- 3) This will move them away, or “place them in opposition to their family, friends, communities, and society in general” (ibid., p. 15)

The specific questions asked to applicants in the Netherlands have not been made public by the IND, but there is an indication given in the werkinstructie about the themes explored in the question, which align very closely with those suggested by LaViolette (1996):

- 1) Private life (family, friends, past relationships, religion)
- 2) Current relationships, homosexual contacts/knowledge in country of origin
- 3) Contact with homosexuals in the Netherlands and knowledge of LGBT situation
- 4) Discrimination, repression and persecution faced in country of origin: including fear of
- 5) Future: what would happen upon return

Importantly, theme 1 refers to the applicant’s *realisation* of their sexuality, the *process of self-acceptance*, and the environmental (family/society) reaction to their orientation: their *coming out*. This reflects the assumption of a linear western *queer identity formation* that involves passing through various stages of self-discovery in a linear form. Furthermore, the emphasis on contact and knowledge of the LGBTQ situation at home and in the Netherlands reiterates the western conceptualisation of a visible identity that is publicly acted out. Lastly, there is a major assumption of a homophobic reaction from family and the environment after the identity is publicly demonstrated in the form of a ‘coming out’.

These questions and their answers don’t exist in isolation, and when considered together they paint a picture of a legitimate LGBTQ person. However it must be questioned what kind of LGBTQ person is painted? When considered carefully, it is clear that these questions echo elements of western understandings of queer identity outlined earlier, which is problematic given that these questions are the very core on which the IND’s investigation is based.

Credibility assessment

The IND recognises that credibility is “strongly determined by the individual case”, but the decision is largely based on whether the testimony is “internally and externally consistent” (Immigratie- en Naturalisatiedienst, 2015). External consistency is determined by whether or not the asylum narrative concurs with the available information about the country of origin generally,

and the situation of LGBT individuals in that country in particular. As outlined in the literature review, this is often not possible due to psychological trauma, an absence of in culture of reflection or internalized homophobia. The IND gets information about the specific issues and dangers in the country of origin, as well as the legal and social situation for LGBT individuals from official documents published by the Dutch Ministry of Foreign Affairs and NGO organisations (IND lawyer, personal communication, September, 22, 2017).

The IND insists that ‘personal declaration’ of self-awareness and self-acceptance is of primary importance. The werkinstructie states that it is not exclusively necessary for the applicant to have had an ‘internal struggle’, but it can be expected that when the applicant comes from a country that doesn’t accept homosexuality, there will be evidence of a *process of becoming aware*. The IND expects a realisation that one is different from what society expected as well as some evidence of a process of discovery (Immigratie- en Naturalisatiedienst, 2015).

The Three Court Cases

Through observation of three asylum cases brought to court at the Rechtbank Amsterdam, I have sought to illustrate the patterns in the reasoning of the IND to reject asylum seekers on the basis that their sexual orientation was not believable. Looking specifically at the context of the Rechtbank in Amsterdam, I therefore looked at the *logic used by the IND decide which stories are legitimate, to see how the cultural understanding of sexuality plays out in Court*. The three cases are first outlined according to the fragmentary information available from court decisions and participant observation in court. This by no means is an attempt to describe, or do justice to, the complexities of their asylum narrative. Rather, I have displayed the official story recorded and dealt with by the courts and subsequently analyzed the IND’s employment of the werkinstructie.

Case 1: Rian Al Maamar (see appendix 1)

Rian Al Maamar, a 26 year old homosexual male from Iraq, has given permission for his decision to be shared with me, and therefore will be referred to by name. Rian had his asylum hearings in July of 2016; he applied for asylum because he was homosexual and experienced problems with his family, and society in general in Iraq. Rian had a boyfriend in Iraq, who helped him flee the country after his brother had shot at him upon discovering that Rian was gay. Rian claims he can’t

return because his family will murder him. His application was originally rejected because his homosexual identity and persecution experienced as a consequence were not deemed believable. Specifically, his process of realisation and acceptance was described too briefly and superficially. The IND was also not convinced about his narratives of his relationships with men in Iraq as well as the relationship with his current fiancé. Rian appealed this decision on the 14th of June 2017 and went to court on the 25th of September 2017. The court ruled his appeal valid and ordered the IND produce a new decision within 10 weeks from November 1st 2017 (Al Maamar v. de staatssecr. van Just. en Veiligheid, 2017).

Case 2: Homosexual Male (see appendix 2)

The second case is of a homosexual male from Pakistan, named H. for the purpose of this thesis. H. applied for asylum on the 23rd of May 2017 because he was “experiencing problems in Pakistan because of his sexual orientation” (Anon. H. v. de staatssecr. van Just. en Veiligheid, 2017). His application was rejected because of inconsistent declarations about when he became aware of his homosexuality, with significant emphasis placed on the inconsistency of the ages at which he declared he realised his attraction toward men. H. appealed this decision on the 28th of August 2017 and went to court on the 22nd of September 2017. The court ruled his appeal invalid and agreed with the IND that his own declarations did not sufficiently prove his sexuality. (Anon. H. v. de staatssecr. Van Just. en Veiligheid, 2017)

Case 3: Lesbian (see appendix 3)

The third case is that of a homosexual female from Guinea, named L. for the purpose of this thesis. L. applied for asylum on the 15th of April 2016, together with her child. The IND pronounced her declaration of persecution due to being lesbian as unbelievable because she did not show enough of a process of realisation. The IND also doubts her current relationship with her female partner. L. appealed this decision on the 25th of August 2017 and went to court on the 22nd of September 2017. The court ruled the appeal invalid on the basis that the IND had declared her story unbelievable on sound grounds. (Anon L. v. de staatssecr. Van Just. en Veiligheid, 2017)

Themes from Court Cases

Self-Realisation as a Moment: Coming Out

In the Werkinstructie, the IND claims to focus on the process of self-realisation and acceptance, as was outlined earlier. It is apparent from the court cases and other field research that they take singular points of time as evidence of this process and when multiple moments are presented, this is considered inconsistent. H.'s case was rejected because of inconsistent declaration of the ages at which he realized his attraction towards men. However, his lawyer explains the inconsistencies in terms of different stages of realization: at age 6 he first had feelings for a man, at 11 he was first sexually attracted to a man and at 16 he realised his homosexual identity. The court agreed with the IND's decision that his declarations were too inconsistent and did not sufficiently prove his identity. The process, therefore, is expected to be singular moments that are interpreted as consistent by the IND. Renkens (2017) asserted in her workshop that interviewers often ask 'at what moment' or when' someone became aware, and that the wording of the question by definition does not ask for the process.

In Rian's case, the court emphasized that the applicant can be expected to be able to talk about a moment (or period) during which they became aware, what this means for him and what influence this had on the way he expresses his sexuality (Al Maamar v. de staatssecr. van Just. en Veiligheid, 2017). Thus the court does not emphasise the process, but rather a (period) of time that this occurred, and when Rian's declarations of when he started realizing his feelings for boys was thought to be too vague. As an asylum lawyer shared with me in an informal conversation, the words 'realisation' or 'acceptance' are hollow to some asylum seekers; the applicants lack the required lexicon and cultural understanding of what it means to accept or realise something. Furthermore asylum seekers might not be able to answer the questions consistently because they are not used to a culture of reflection. Applicants may never have reflected on sexuality the way one does in the Netherlands, and therefore never before considered the moment they first realised it (Asylum lawyer, personal communication, September, 25, 2017).

The focus on singular moments can be linked to the concept of a 'coming out', at which the realisation of non-heterosexuality is announced to the social environment. In an informal conversation, IND official emphasized that the coming out moment is very important in the interviews, and is always asked about (IND lawyer, personal communication, September, 22,

2017). However, the concept of coming out might be culturally determined too, as was confirmed by an interview with two homosexual successful asylum applicants ('Sam' & 'Max', 2017, October 23, personal interview). 'Sam' and 'Max' are a couple that sought asylum in the Netherlands from Dubai; 'coming out' is not something they ever did and thus they struggled to talk about it during the IND interviews. "They ask you things which is not really common in our culture in a way, which is something really common in Europe, so they ask you about the coming out story and this is a really tricky question because you don't know what this means in a way" (Sam, 2017, October 23).

Compulsory Struggle in Self-Realisation

The Werkinstructie explicitly states that applicants do not need to show evidence of struggle with their sexual orientation. In the court cases it is clear however that the IND officers interpreted the lack of a struggle as a lack of insight into the realisation and acceptance, which is then used to undermine the credibility of LGBTQ status. The expectation of a struggle is easily traced back to the article by LaViolette (1996); the interview questions are largely based on the assumption that an individual will struggle with discovering their non-heterosexuality in a homophobic world.

All three court cases demonstrated that the IND expected to see this 'struggle'. Rian was rejected because he had shown no doubt or concern regarding his homosexuality, which was deemed unrealistic given that it is unaccepted/taboo in Iraq. Similarly, H. did not show enough internal struggle given the environment, as "from someone who grew up in such an environment [where homosexuality is not accepted] and claims to be homosexual, one can expect that [he] is able to declare well and consistently about realisation and self-acceptance" (Anon. H. v. de staatssecr. van Just. en Veiligheid, 2017, p. 2). This is especially interesting because the IND is claiming here that his homosexuality in a homophobic environment should allow to declare especially consistently about his process of self-realisation. However, as is clear from the literature review of factors affecting credibility, genuine LGBTQ individuals might not be able to declare consistently especially if they lack the required lexicon, or experience trauma or internalized homophobia due to having grown up in an homophobic environment.

In Case 3, the IND deemed L's declaration unbelievable because it was thought not possible that she had accepted herself almost immediately given the homophobic environment.

The IND didn't believe that she rarely thought about whether her homosexuality was good or bad, but rather followed her emotions in terms of pursuing same-sex relationships. She further declared that she was not mad at herself but at her environment, and this was considered too vague a statement. L.'s lawyer commented that a struggle is not necessary according to the Werkinstructie, and that self-acceptance of being a lesbian in a homophobic environment should not be deemed impossible. (Anon. L. v. de staatssecr. van Just. en Veiligheid, 2017)

Romance, Not Just Sex

The IND makes clear in the Werkinstructie that declarations about sexual acts will not be taken into consideration. This, combined with the questions regarding previous and past relationships, appear to prioritise romantic, affective same-sex relationships over same-sex sexual relationships. In Rian's case, his appeal was granted largely because of the evidence he provided of his relationship. Rian's fiancé spoke to the court about how they just wanted to build a life together. Both Rian and his fiancé cried in court, and although it cannot be proven that this show of emotion contributed to the decision to grant the appeal, it did present a readable picture of their relationship.

In the case of the lesbian woman, her focus on the sexual side of her relationships with women was deemed too vague, unrealistic and therefore not legitimate. L.'s declarations about her 12 year secret relationship with a woman were judged unrealistic because she couldn't provide details other than their sexual encounters. She recalled stories about sleeping over at her partner's house but the IND claimed that descriptions of her sexual relationship were not enough to prove that the relationship was more than just a friendship.

It is therefore clear that romantic, affective same-sex relationships are considered a credible evidence of LGBTQ identity. However, sex and sexual identity have been shown to be culturally relative concepts and the individual may not be accustomed to speaking about their intimate romantic relationships in affective terms, and thus resort to 'container terminology' about sexual activity (Beddeleem, 2017). Conversation with an LGBT asylum lawyer confirmed that some asylum seekers are not used to talking about their homosexuality and thus focus on sexual acts; their sexuality has always been a discrete, secret activity and they cannot talk about it in open, affective terms and thus resort to sex (Asylum lawyer, personal communication, September, 25, 2017). An IND officer also agreed that asylum seekers may be used to different expressions of

love and attractions than those in the Netherlands, but remained adamant that applicants should be able to talk about things other than sex (IND lawyer, personal communication, September, 22, 2017). Renkens (2017) argues that even if an applicant is only able to talk about the sexual elements of the relationship, this might just mean that they are ‘practicing’ homosexuality but don’t identify with other elements of it. This appears to contradict what the IND is looking for in terms of queer identity.

Rigid Labels

The IND appears to take the self-proclaimed sexual identity of the applicant as rigid, and then use any narrative evidence that contradicts this label to argue that the asylum narrative is not consistent. In L’s case, part of what made her lesbian identity not believable was that she has had sexual relationships with men in the past, even upon arriving in the Netherlands. Her lawyer argued that her having sex with men could be explained by the fact that she has a preference for women but doesn’t mind having sex with men, and although she is emotionally attracted to women, she is okay with the physical act of sex with men. The IND declared that her relationship with a man once coming to the Netherlands made her sexual identity ingenuine because she had previously claimed to be a lesbian and have no feelings towards men. Furthermore, the IND claimed that what questioned her credibility as a lesbian was the fact that she conceived a son with a Dutch man who paid her to have sex with. (Anon. L. v. de staatssecr. van Just. en Veiligheid, 2017)

The IND expects to see no contradicting behaviours to the self-proclaimed identity, using the logic that sex with men contradicts that someone is a lesbian. It is clear from her lawyer’s arguments that she may fall anywhere on the bisexual+ spectrum but perhaps just didn’t have the lexicon to express this. Identity labels, used to self-identify in knowable categories of sexuality, are culturally determined and may even be misunderstood by the applicant (Lee & Brotman, 2011). She may have been using ‘lesbian’ as a container word (Beddeleem, 2017), not realising that this would imply to the interviewer that any behaviour outside this identity would contradict the believability of it.

In the interview with ‘Sam’ and ‘Max’, it became clear that there were no “friendly words” to describe being gay in Arabic. Instead they adopted English and French vocabulary to describe their identity only to other LGBTQ people; “at the beginning it wasn’t easy to say it”, because they

had never before talk to a stranger about their sexuality. ('Sam' & 'Max', 2017, October 23, personal interview) Thus the expectation of rigid identity labels is further problematic because of the potential lack of experience of applicants in adopting a label for their sexuality.

Self-actualized Identity

In L.'s case, the IND also appeared to expect that once she arrived in the Netherlands, she be confident in enacting her sexual orientation. The IND claimed it was not believable that once she arrived she didn't know how to start a relationship with a woman, because she claimed to have had a lesbian relationship in the past. However, such would require confidence in her sexuality, and could be linked to the later stages of the identity formation model suggested by Cass (1979). L. had a brief relationship with a man, which the IND interpreted as contradicting her lesbian identity. These contradicting behaviours could also be reflection of how she has not yet achieved acceptance of her identity. Why does the IND assume that the asylum seeker has reached high level of identity acceptance or synthesis when they arrive in the Netherlands?

This was corroborated by an informal conversation I had with an asylum seeker lawyer. They stated that often the process of realisation of an identity only starts once the asylum seekers arrives in the Netherlands; applicants are often still in the middle of the process of figuring out their identity, and the IND should stop assuming that they will have undergone the entire process upon arrival (Asylum lawyer, personal communication, September, 25, 2017). Berg and Millbank (2009) wrote extensively on this subject and concluded that not only is identity formation not universal or linear, but the applicant does not "reach some higher state of self-actualization coinciding neatly with her entry into the receiving country or her articulation of her claim for refugee status" (p. 200).

Public Visibility

Literature has shown that part of being a readable queer subject is being publically queer (Murray, 2014; Lewis, 2014; Akin, 2017). The IND claims that this is not important. However, it was interesting to note that Rian's appeal, which had most public visibility in terms of media attention, was the only one granted. At Rian's court date, the entire room was filled with family, his fiance, friends, activist Kortekaas from #nietgaygenoeg and a reporter. H.'s courtroom was similarly filled

with support from Stichting Secret Garden and others that adhered to stereotypically LGBTQ appearance.

The IND declared that support of applicants by LGBTQ organisations doesn't affect the decision. In H.'s case, the IND declared that being present at a public demonstration for LGBTQ issues cannot support proof of identity, which the court agreed with. However the court also declared in decision *Anonymous Applicant v. de staatssecretaris van Veiligheids en Justitie* (2016) that whilst membership of the COC (major LGBT organisation in the Netherlands) cannot be taken as decisive evidence, but can be weighted positively towards the decision. The arguments of the IND in Rian and H's cases make it clear that being a publically visible queer figure is not deemed necessary, but this is inconsistently enforced by the IND in other cases. To be able to make any conclusive judgements about a requirement by the IND to be a 'visible queer', research into more cases would need to be conducted.

Conclusions

As is clear from these themes, the IND expects a specific narrative according to their cultural understanding of a credible LGBTQ person. There appears to be an expectation of the existence of a coming out, proceduralised as self-realisation at a point in time rather than a process. The expectation of a struggle in self-realisation reflects a Foucauldian assumption that the applicant's sexuality is deviance to a heterosexual norm in a homophobic environment.

Furthermore, the expectation of fixed categories of self-identity and no contradicting behaviours alludes to the narrative of queer identity over acts, where someone 'is queer', rather than 'engages in queerness'. This shows a clear expectation that the applicant's identity is self-actualized into their identity and reflects Foucault and Cass's conceptualization of same-sex sexual activity as integrated, or synthesized, into identity of the individual. This relates to Eliason's (2014) discussion of terminology used for self-identification and subcategories employed to clarify attraction; where self-identification into a category comes with certain expectations of appropriate behavior. However, given that attraction and the vocabulary available to categorize these are culturally relative (Kagan, 2002; Akin, 2017; Beddeleem, 2017), the labels as understood by the IND don't necessarily match those of the applicant. Lee and Brotman (2011) have also asserted that "While some sexual minority refugees clearly took up Western notions of sexual identity

formation, others partially or completely rejected aligning themselves with Western conceptualizations of gender and sexual identity” (p.262 - 263).

Regarding the stability of sexual identity, viewing self-identification as fact doesn't allow for the fluidity of identity labels. Sexual identity has been recognized by some queer scholars as fluid and research has found sexual identity and fluidity to be very complex (Katz-Wise, 2015). Katz-Wise (2015) found that 64% of women in their study showed fluidity of sexual attraction, and that this was not dependent on what the individuals self-identified as. In other words, a lesbian was equally likely to show sexual fluidity as someone who identified as bisexual. Whilst the discourse on the fluidity of sexuality is gaining traction in western queer theory, it is still not the dominant discourse. There is still an expectation to self-identify using knowable terminology and a “system of social categorization [that] may be erasing sexual identity if identity is a lifelong process and our current partner is only a one-time snapshot” (Better, 2014). The IND appears to mimic this discourse and look for rigid categorisation of sexual identity that erases the possible fluidity of the applicant's' experiences.

The narrative expected by the IND is therefore of a struggle with same-sex attraction moment(s) of realisation and a coming out that leads into a stable, self-actualized identity, able to be discussed in affective rather than sexual terms. Sexual identities as understood by the IND interviewers are created through the dominant discourse in the Netherlands that present sexual identity as being fixed, public, self-actualized and publically demonstrated. Foucault (1978) asserts that sexuality is socially, culturally and historically constructed, thus how can we expect accurately to assess the genuineness of somebody's LGBTQ status when they come from a different context with different discourses and cultural understandings?

I have attempted to identify the elements that the IND appears to look for in assessing legitimate LGBTQ status as a reflection of the western discourse of queer identity I have sketched earlier as fixed, self-actualized and in clear opposition to the heterosexual norm. I would like to question the assumption that asylum seekers from non-western contexts will adhere to, and be able to show, these elements in their asylum narrative. This thesis has shown that the Dutch asylum system struggles to account for the complexity of the individual applicants, their ability to tell a coherent story, psychological make-up, understanding of identity and how this fits in with the interviewer's understanding of cultural constructions of identity. Important to note is the inability

for the system of bureaucracy that the asylum system is embedded in, to account for the individual's experiences of persecution and LGBTQ identity. The categorization inherent legal system, which can be clearly seen in the inflexible way lawyers apply the *Werkinstructie*, eradicates individuality and personal experience in the process. Hence it is important for anthropological research to continue in this field to examine the diversity in constructs of identity.

The implication of this research is that applicants who don't adhere to this conceptualisation have more trouble being read as credible. Conclusions cannot be drawn from this research about whether the imposition of this western conceptualisation has led to some legitimately LGBTQ asylum seekers being rejected, although this could be a topic for further research. Rather, I would like to undermine the discourse used by the IND to assess genuine LGBTQ status, as it is a reflection of the Dutch perspective on queer identity and does not necessarily reflect the realities of asylum seekers. It is clear that the Dutch asylum system incorporates a particular way of thinking about queer identity that does not always correspond with experiences of people from different cultures.

Therefore those working in this field, but especially IND interviewers and lawyers, need to be aware of their own cultural understanding of what it means to be queer and the fact that not all asylum seekers fit into this understanding. Beddeleem (2017) explained that training for interviewers exists but is rarely enforced and does not adequately discuss specific LGBTQ issues. The IND interviewers receive 'inclusiveness training' from EASO, the European Asylum Support Office (IND lawyer, personal communication, September, 22, 2017). Although this training covers special considerations for LGBTQ applicants, it does not provide any information about the different cultural expressions of sexual orientation ("EASO Tool", 2016). Given this lack, I would like to recommend that interviewers need more training and information about other cultural constructions that exist outside the discourse on sexuality they are familiar with. Secondly, given the cultural relativity of constructions of sexuality, it follows that there should be more nuance in the questions asked based on the country of origin of the applicant. LGBTQ applicants come from a diverse range of countries with diverse constructions of sexuality and one asylum procedure/questioning should not be applied to all.

Another suggested solution is to change the *Werkinstructie* to focus away from the narrative of their LGBTQ identity. If the IND imposes their cultural understanding of what is queer

on the narrative, how can they effectively test whether or not the individual is actually queer? A focus on the narrative of the persecution faced would somewhat solve this issue. Further research must also be conducted into the fluidity of storytelling, and the cultural relativity of the way stories are constructed. Not just the conceptualisation of sexuality is interpreted through the IND's cultural understanding of who a queer person is, but also the structure, consistency and linearity of storytelling according to the available lexicon.

So how can one expect someone to come to the Netherlands for the first time, and describe Hagelslag? They might have never seen it in their lives, and are now made to explain it to someone who has all the cultural understanding necessary to assess whether their description is accurate. Even if they have seen it before, likely for the first time recently, they might succeed in giving a vague description and superficial similarities with constructions that exist in other cultures, such as chocolate sprinkles. However they will logically fail to explain the intricacies of its consumption and meaning as they do not have the same cultural understanding as a Dutch person. If we can't even expect foreigners to explain Hagelslag to a Dutch person, how can the asylum system possibly expect an individual's description of their culturally relative understanding of queer identity to match with the IND's conceptualisation of it?

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Appendices

Appendix 1: Rian Al Maamar's Appeals Court Decision

uitspraak

RECHTBANK DEN HAAG

Zittingsplaats Amsterdam

Bestuursrecht

zaaknummer: NL.17.3145

V-nummer: 281.927.2058

**uitspraak van de enkelvoudige kamer voor vreemdelingenzaken van 1 november 2017
in de zaak tussen**

Al Maamar, Zamen,
geboren op 2 augustus 1991, van Iraakse nationaliteit, eiser
(gemachtigde mr. B. Lit),

en

de staatssecretaris van Justitie en Veiligheid, als rechtsopvolger van de staatssecretaris
van Veiligheid en Justitie, verweerder
(gemachtigde mr. F. Gerritsen).

Procesverloop

Bij besluit van 23 mei 2017 (het bestreden besluit) heeft verweerder de aanvraag van eiser van 18 oktober 2015 tot verlening van een verblijfsvergunning voor bepaalde tijd als bedoeld in artikel 28 van de Vreemdelingenwet (Vw) 2000 afgewezen.

Op 14 juni 2017 heeft de rechtbank het beroepschrift van eiser ontvangen. Verweerder heeft een verweerschrift ingediend.

Het onderzoek ter zitting heeft plaatsgevonden op 25 september 2017. Eiser is verschenen, bijgestaan door zijn gemachtigde en M.N. Nouri, tolk in de Arabisch-Iraakse taal. Verweerder is vertegenwoordigd door zijn gemachtigde. Ook waren ter zitting meerdere belangstellenden aanwezig, waaronder R. Boone en S. Kortekaas. De rechtbank heeft het onderzoek ter zitting gesloten.

Overwegingen

Feiten en omstandigheden

1. Eiser heeft zich op 18 oktober 2015 aangemeld bij het AC Aanmeldcentrum Ter Apel. Op dezelfde datum heeft eiser onderhavige asielaanvraag ingediend en heeft het aanmeldgehoor plaatsgevonden. Op 10 juli 2016 heeft het eerste gehoor plaatsgevonden. Ten aanzien van het rapport eerste gehoor zijn op 11 juli 2016 correcties en aanvullingen ingediend. Op 12 juli 2016 heeft het nader gehoor plaatsgevonden en ten aanzien van het

rapport van dat gehoor zijn op 13 juli 2016 correcties en aanvullingen ingediend.

Asielrelaas

2. Aan zijn asielaanvraag heeft eiser het volgende relaas ten grondslag gelegd. Eiser heeft verklaard dat hij homoseksueel is en hierdoor problemen met zijn familie (en de maatschappij in zijn algemeenheid) heeft ondervonden in Irak.

Grondslag afwijzing aanvraag

3.1 Verweerder heeft de volgende relevante elementen in het asielrelaas van eiser onderscheiden:

- a) Identiteit, nationaliteit en herkomst;
- b) Homoseksuele gerichtheid;
- c) Problemen vanwege homoseksuele gerichtheid.

3.2 Verweerder heeft in zijn besluit, waarin het voornemen is ingelast, de aanvraag van eiser afgewezen op grond van artikel 31 van de Vw 2000. Verweerder acht alleen element a) geloofwaardig. Verweerder heeft eisers homoseksuele gerichtheid niet geloofwaardig geacht. Daarbij heeft verweerder met name van belang geacht dat eiser summier heeft verklaard over het proces van bewustwording en acceptatie. Daarnaast heeft eiser volgens verweerder summier en oppervlakkig verklaard over onder meer zijn gestelde relaties in Irak. Verweerder heeft verder vraagttekens bij de gestelde relatie met de heer R. Boone (Boone) gezet. Omdat verweerder de homoseksuele gerichtheid van eiser niet geloofwaardig acht, heeft verweerder ook de gestelde problemen van eiser vanwege zijn homoseksuele gerichtheid ongeloofwaardig geacht.

Standpunten partijen

4.1 Eiser stelt dat verweerder zijn homoseksuele gerichtheid niet ongeloofwaardig heeft mogen achten. Uit werkinstructie 2015/9 volgt weliswaar dat het zwaartepunt bij de beoordeling van de geloofwaardigheid van de seksuele gerichtheid ligt bij de verklaringen van eiser zelf, maar in algemene zin verzet geen rechtsregel zich er tegen dat bij de geloofwaardigheid van de seksuele gerichtheid ook andersoortig bewijs dan enkel mondelinge verklaringen betrokken kunnen worden. Eiser heeft 115 foto's en prints van Whatsapp verkeer tussen eiser en zijn huidige partner Boone overgelegd om zijn homoseksuele gerichtheid te onderbouwen. Tevens heeft eiser een relatieverklaring van de relatie met Boone overgelegd. Verweerder miskent dat gelet op alle bewijsstukken tezamen bezien er een beeld ontstaat van eiser als iemand die zich gedurende een lange periode ten opzichte van verschillende personen consistent opstelt, gedraagt en uit als een homoseksuele man.

4.2 Verweerder heeft het bestreden besluit nader toegelicht met zijn verweerschrift en daarin voorop gesteld dat het op grond van artikel 31, eerste lid, van de Vw 2000 aan eiser is om zijn seksuele gerichtheid aannemelijk te maken. Verweerder heeft overeenkomstig zijn vaste gedragslijn (werkinstructie 2015/9) de seksuele gerichtheid van eiser onderzocht en beoordeeld. Volgens de Afdeling bestuursrechtspraak van de Raad van State¹ (Afdeling) mag verweerder bij de beoordeling van een dergelijk asielmotief veel waarde hechten aan de

¹ Zie uitspraak 15 juni 2016, ECLI:NL:RVS:2016:1630.

verklaringen van eiser over zijn eigen ervaringen. In dit geval heeft eiser met zijn verklaringen onvoldoende inzicht gegeven in met name zijn bewustwordings- en acceptatieproces. Volgens verweerder is het bevreemdend dat eiser geen enkele twijfel dan wel bezorgdheid kende ten aanzien van zijn seksuele gerichtheid,² zeker gezien het feit dat homoseksualiteit in Irak als maatschappelijk onacceptabel en als taboe wordt gezien. De overgelegde foto's, Whatsapp-gesprekken, filmpjes, krantenartikelen en diverse verklaringen van familieleden, vrienden en Boone kunnen hieraan niets afdoen. Deze kunnen namelijk – ongeacht van wie deze afkomstig zijn – blijkens de werkinstructie buiten beschouwing worden gelaten bij de beoordeling van de seksuele gerichtheid. Ook de informatie van het COC van 7 september 2017 en het LGBT Asylum Support van 11 september 2017 maakt het standpunt niet anders. Immers, deze verklaringen kunnen enkel dienen ter onderbouwing van aannemelijke verklaringen van eiser, aldus verweerder in het verweerschrift. Ter zitting heeft de gemachtigde van verweerder voornoemd standpunt enigszins genuanceerd en nader toegelicht dat weliswaar veel gewicht wordt toegekend aan de eigen verklaringen van eiser maar dat ander bewijsmateriaal ook kan bijdragen aan de aannemelijkheid van het asielrelaas, indien wordt getwijfeld aan het asielrelaas. In het geval van eiser maakt dit evenwel geen verschil. In het voornemen en bestreden besluit zijn de door eiser aangedragen foto's, Whatsapp-gesprekken, filmpjes, krantenartikelen en diverse verklaringen beoordeeld en is geconcludeerd dat dit niet kan leiden tot een andere uitkomst, aldus verweerder ter zitting.

Bestuursrechtelijke toetsing

5.1 Het geschil spitst zich toe op de vraag of verweerder de gestelde homoseksuele gerichtheid van eiser ongelooftwaardig heeft mogen achten.

5.2 De rechtbank stelt voorop dat de Afdeling in voornoemde uitspraak van 15 juni 2016 heeft geoordeeld dat werkinstructie 2015/9 op een zorgvuldige wijze tot stand is gekomen. Bij de beoordeling van verweerders beoordelingsmethode heeft de Afdeling overwogen dat verweerder in individuele zaken een integrale geloofwaardigheidsbeoordeling moet verrichten, waarbij hij rekening houdt met de persoonlijke omstandigheden, achtergrond en leeftijd van de vreemdeling. Hij beziet hiertoe de verklaringen over de in werkinstructie 2015/9 vermelde aspecten uitdrukkelijk in hun onderlinge samenhang, en in het licht van overige verklaringen en overgelegd bewijsmateriaal, en brengt die weging in zijn besluitvorming tot uitdrukking. De Afdeling heeft voorts geoordeeld dat verweerder bij de beoordeling van het asielrelaas terecht veel waarde hecht aan de verklaringen van een vreemdeling over zijn eigen ervaringen. Een vreemdeling die een seksuele gerichtheid als motief aanvoert, is zich op enig moment van die gerichtheid bewust geworden en heeft zich gerealiseerd dat zijn gerichtheid in zijn omgeving of land van herkomst niet geaccepteerd wordt. Hij moet daarom kunnen verklaren over het moment waarop of de periode waarin hij zich bewust is geworden van zijn seksuele gerichtheid, wat deze seksuele gerichtheid voor hem heeft betekend en welke invloed dit heeft gehad voor de manier waarop hij uiting heeft gegeven aan zijn seksuele gerichtheid. Dit alles bezien tegen de achtergrond van de omgeving waaruit hij afkomstig is.

5.3 Uit deze uitspraak volgt dat verweerder terecht veel waarde hecht aan de verklaringen van een vreemdeling over zijn eigen ervaringen. Verweerder dient blijkens de

² Werkinstructie 2015/9, paragraaf 2.1.

uitspraak die verklaringen echter ook te bezien in het licht van het overgelegd bewijsmateriaal. In de voorliggende zaak heeft eiser gewezen op een uitdraai van WhatsApp-berichten tussen eiser en Boone over de periode van 3 mei 2017 tot en met 12 september 2017, foto's van eiser en Boone, diverse verklaringen van familie en vrienden, een relatieverklaring tussen eiser en Boone, een kostenoverzicht ten behoeve van samenwoning tussen eiser en Boone en een brief van Kortekaas van LGBT Asylum Support van 11 september 2017. In het voornemen en bestreden besluit is gesteld dat deze stukken niet objectief zijn en niets zeggen over de oprechtheid en aannemelijkheid ten aanzien van de gestelde homoseksuele gerichtheid. De rechtbank oordeelt anders. Hoewel niet vanzelfsprekend doorslaggevend betekenis hoeft te worden gegeven aan voornoemde stukken, zoals eiser lijkt te betogen, laat dit naar het oordeel van de rechtbank onverlet dat verweerder gemotiveerd uiteen dient te zetten op grond waarvan deze stukken niet kunnen bijdragen aan de geloofwaardigheid van eisers asielaas. Het standpunt van verweerder dat niet alle stukken van een volgens verweerder objectieve bron afkomstig zouden zijn, betekent naar het oordeel van de rechtbank niet dat daar dus geen bewijskracht aan kan toekomen. Daarnaast is de rechtbank van oordeel dat de door eiser overgelegde stukken ten aanzien van de gestelde relatie met Boone als ondersteunend bewijs kunnen dienen om aannemelijk te maken dat eiser een homoseksuele gerichtheid heeft. Als verweerder desondanks twijfelt of daadwerkelijk sprake is van een affectieve relatie dan beschikt hij over de middelen om dat te onderzoeken, bijvoorbeeld door de betrokkenen te horen. Juist omdat een relatie of het hebben van contacten een objectieve manier is om de gerichtheid te onderbouwen, had het op de weg van verweerder gelegen om daarnaar voor het nemen van het besluit onderzoek te doen. Nu verweerder dit heeft nagelaten, heeft hij gehandeld in strijd met artikel 3:2 van de Algemene wet bestuursrecht (Awb) en is het besluit tevens ondeugdelijk gemotiveerd en daarmee in strijd met artikel 3:46 van de Awb. Het beroep is gegrond en de rechtbank vernietigt het bestreden besluit. Verweerder zal een nieuw besluit moeten nemen met inachtneming van deze uitspraak.

5.4 De rechtbank ziet nu nog nader onderzoek moet worden gedaan geen aanleiding om het geschil finaal te beslechten. Niet uit te sluiten valt dat dit nadere onderzoek enige tijd zal vergen. De rechtbank stelt voor het nieuw te nemen besluit daarom een termijn van tien weken.

6. De rechtbank veroordeelt verweerder in de door eiser gemaakte proceskosten. Deze kosten stelt de rechtbank op grond van het Besluit proceskosten bestuursrecht voor de door een derde beroepsmatig verleende rechtsbijstand vast op € 990,- (1 punt voor het indienen van het beroepsschrift, 1 punt voor het verschijnen ter zitting met een waarde per punt van € 495,-, en een wegingsfactor 1). Indien aan eiser een toevoeging is verleend, moet verweerder de proceskostenvergoeding betalen aan de rechtsbijstandsverlener.

Beslissing

De rechtbank,

- verklaart het beroep gegrond;
- vernietigt het bestreden besluit;
- draagt verweerder op binnen 10 weken na de dag van verzending van deze uitspraak een nieuw besluit te nemen op de aanvraag met inachtneming van deze uitspraak;
- veroordeelt verweerder in de proceskosten van eiser tot een bedrag van € 990,-- (zegge: negenhonderdnegentig euro).

Deze uitspraak is gedaan door mr. A.K. Mireku, rechter, in aanwezigheid van mr. S.N. de Jager, griffier. De beslissing is in het openbaar uitgesproken op 1 november 2017.

griffier

rechter

Afschrift verzonden aan partijen op:

- 1 NOV 2017

Conc.: SJ

D:

VK

Tegen deze uitspraak kunnen partijen binnen vier weken na de dag van verzending daarvan hoger beroep instellen bij de Afdeling bestuursrechtspraak van de Raad van State (adres: Raad van State, Afdeling bestuursrechtspraak, Hoger beroep vreemdelingenzaken, Postbus 16113, 2500 BC 's-Gravenhage). Naast de vereisten waaraan het beroepschrift moet voldoen op grond van artikel 6:5 van de Awb (zoals het overleggen van een afschrift van deze uitspraak) dient het beroepschrift ingevolge artikel 85, eerste lid, van de Vw 2000 een of meer grieven te bevatten. Artikel 6:6 van de Awb (herstel verzuim) is niet van toepassing.

uitspraak

RECHTBANK DEN HAAG

Zittingsplaats Amsterdam

Bestuursrecht

zaaknummers: [REDACTED]

V-nr: [REDACTED]

**uitspraak van de enkelvoudige kamer en de voorzieningenrechter van 12 oktober 2017
in de zaak tussen**

[REDACTED] geboren op [REDACTED] van [REDACTED] nationaliteit, eiser
(gemachtigde mr. B.D. Lit),

en

**de minister van Veiligheid en Justitie, voorheen de staatssecretaris van Veiligheid en
Justitie, verweerder**
(gemachtigde mr. J.R. Bekink).

Procesverloop

Bij besluit van 28 augustus 2017 (het bestreden besluit) heeft verweerder de aanvraag van eiser van 23 mei 2017 tot verlening van een verblijfsvergunning voor bepaalde tijd als bedoeld in artikel 28 van de Vreemdelingenwet (Vw) 2000 afgewezen als kennelijk ongegrond op grond van artikel 31 in verband met artikel 30b, eerste lid, aanhef en onder g, van de Vw 2000.

Op 28 augustus 2017 heeft de rechtbank het beroepschrift en het verzoek om een voorlopige voorziening van eiser ontvangen.

Het onderzoek ter zitting heeft plaatsgevonden op 22 september 2017. Eiser is verschenen, bijgestaan door zijn gemachtigde. Verweerder is vertegenwoordigd door zijn gemachtigde. Ter zitting was ook aanwezig B. Sukhae, als tolk Urdu. De rechtbank/voorzieningenrechter (hierna: de rechtbank) heeft het onderzoek ter zitting gesloten.

Overwegingen

Standpunt van verweerder

1.1 Verweerder stelt zich op het standpunt dat het relaas van eiser de volgende relevante elementen bevat:

- Eiser is [REDACTED] geboren op [REDACTED] in Pakistan. Hij heeft de Pakistaanse nationaliteit en behoort tot de bevolkingsgroep Pashtun.
- Eiser is homoseksueel en heeft dientengevolge problemen ondervonden in Pakistan.

2. Verweerder gelooft de identiteit, nationaliteit en afkomst van eiser. Verweerder

gelooft echter niet dat eiser homoseksueel is.

Standpunt van eiser

3. Eiser is het hier niet mee eens en voert aan dat hij wel homoseksueel is. Dit blijkt uit zijn verklaringen, met name in de correcties en aanvullingen, en uit de verklaringen van derden die zijn ingediend. Als alles bij elkaar wordt genomen, moet tot de conclusie worden gekomen dat eiser homoseksueel is.

Beoordeling door de rechtbank

4.1 Eiser heeft eerder een asielpcedure doorlopen waarbij zijn homoseksuele geaardheid ongeloofwaardig is geacht door verweerder. Dit oordeel staat in rechte vast. Verweerder heeft zich in de onderhavige procedure eerst op het standpunt gesteld dat er geen nieuwe feiten en omstandigheden zijn aangevoerd die de eerdere afwijzing anders maken. Naar aanleiding van de uitspraak van deze rechtbank en zittingsplaats van 27 juni 2017¹ heeft verweerder opnieuw een voornemen en beschikking genomen waarin inhoudelijk is getoetst en waarin de homoseksualiteit van eiser wederom ongeloofwaardig wordt geacht.

4.2 De rechtbank is van oordeel dat verweerder het relaas van eiser op goede gronden ongeloofwaardig heeft geacht. Hierbij heeft verweerder kunnen betrekken dat eiser summier en tegenstrijdig heeft verklaard over zijn bewustwordingsproces en zelfacceptatie. In het nader gehoor in de eerste procedure stelt eiser dat hij in de negende klas zat toen hij zich bewust werd van zijn homoseksualiteit. Hij was toen zestien jaar. Tijdens het opvolgende gehoor verklaart hij dat hij zijn homoseksualiteit had opgemerkt toen hij elf jaar was, op het moment dat de film Titanic uitkwam. Later in het gehoor verklaart hij dat hij zich bewust was van zijn homoseksualiteit toen hij veertien of vijftien jaar oud was. In de correcties en aanvullingen op het opvolgende gehoor verklaart eiser dat hij zich tot zijn zeventiende aangetrokken voelde tot mannen, maar dat hij zich tot die leeftijd niet bewust was dat dat blijvend zou zijn of dat hij homoseksueel zou zijn. Dit is tegenstrijdig. Tevens verklaart eiser in het opvolgende gehoor dat zich op zijn elfde bewust werd van zijn homoseksualiteit toen de film Titanic uitkwam en hij de acteur die daarin speelde leuk vond. Daarnaast verklaart hij dat zijn neven geïnteresseerd waren in sport en dat hij zelf hield van koken en huishoudelijke dingen. Deze verklaringen zijn te oppervlakkig en summier, gelet op zijn land van herkomst. Eiser is namelijk opgegroeid in een omgeving waar homoseksualiteit niet wordt geaccepteerd. Van iemand die is opgegroeid in een dergelijke omgeving en stelt homoseksueel te zijn, mag worden verwacht dat hij goed en consistent kan verklaren over zijn bewustwording en zelfacceptatie. Daar komt bij dat deze verklaringen zijn afgelegd toen hij voor de tweede keer over zijn homoseksualiteit werd gehoord door verweerder. Eiser wist wat hij kon verwachten en heeft toch niet uitgebreid en consistent kunnen verklaren. In de correcties en aanvullingen heeft eiser wel wat uitgebreider verklaard, maar verweerder heeft terecht gesteld dat eiser gelet op hetgeen hiervoor is overwogen geen plausibele redenen heeft gegeven voor het feit dat hij dit niet eerder dan bij deze correcties en aanvullingen heeft kunnen verklaren.

4.3 Niet in geschil is verder dat eiser actief is in de Nederlandse homogemeenschap. Dit betekent echter niet dat eiser daarmee aannemelijk heeft gemaakt homoseksueel te zijn. Ook aan de ingediende verklaringen van personen die eiser kennen kan geen doorslaggevende betekenis worden toegekend. De verklaringen van eiser zelf zijn bij de onderhavige

¹ Nummers NL17.2598 en NL 17.2599.

beoordeling leidend. Dit volgt uit Werkinstructie 2015/9 en vaste jurisprudentie van de Afdeling². Volgens de Afdeling beziet verweerder bij de beoordeling van een seksuele gerichtheid de verklaringen over de in de Werkinstructie 2015/9 vermelde aspecten, de overige verklaringen en het overgelegde bewijsmateriaal in hun onderlinge samenhang en hecht hij daarbij in de regel veel waarde aan de verklaringen van een vreemdeling over zijn eigen ervaringen. Verweerder moet inzichtelijk maken hoe hij de verklaringen over een gestelde seksuele gerichtheid heeft beoordeeld en gewaardeerd. Daarbij kan hij in beginsel doorslaggevende waarde toekennen aan de ontoreikende verklaringen van een vreemdeling over zijn eigen ervaringen. Zoals hiervoor is overwogen heeft eiser met zijn verklaringen onvoldoende aannemelijk gemaakt dat hij homoseksueel is.

4.4 Gelet op het voorgaande heeft verweerder de seksuele geaardheid van eiser ongelooftwaardig kunnen achten. Niet is in geschil dat dit de tweede asielaanvraag van eiser is. Verweerder heeft de asielaanvraag van eiser daarom terecht afgewezen als kennelijk ongegrond op grond van artikel 31 in verband met artikel 30b, eerste lid, aanhef en onder g, van de Vw 2000.

Conclusie

5. Het beroep van eiser is ongegrond. Omdat de rechtbank heden op het beroep heeft beslist wijst de rechtbank het verzoek om een voorlopige voorziening af. Voor een proceskostenveroordeling bestaat geen aanleiding.

² Bijvoorbeeld de uitspraak van 6 oktober 2017 (ECLI:NL:RVS:2017:2715).

Beslissing

De rechtbank:

- verklaart het beroep ongegrond;
- wijst het verzoek om een voorlopige voorziening af.

Deze uitspraak is gedaan door mr. A.C. Loman, rechter, in aanwezigheid van mr. W.M. Goncalves Sobral, griffier. De beslissing is in het openbaar uitgesproken op 12 oktober 2017.

griffier 

rechter 

Afschrift verzonden of digitaal ter beschikking gesteld aan partijen op:

12 OKT 2017

Conc.: WGS
Coll.: BG

Tegen deze uitspraak kunnen partijen binnen één week na de dag van verzending daarvan hoger beroep instellen bij de Afdeling bestuursrechtspraak van de Raad van State (adres: Raad van State, Afdeling bestuursrechtspraak, Hoger beroep vreemdelingenzaken, Postbus 16113, 2500 BC 's-Gravenhage). Naast de vereisten waaraan het beroepschrift moet voldoen op grond van artikel 6:5 van de Awb (zoals het overleggen van een afschrift van deze uitspraak) dient het beroepschrift ingevolge artikel 85, eerste lid, van de Vw 2000 een of meer grieven te bevatten. Artikel 6:6 van de Awb (herstel verzuim) is niet van toepassing. Tegen de uitspraak op het verzoek om een voorlopige voorziening staat geen rechtsmiddel open.

Appendix 3: L.'s Appeals Court Decision

uitspraak

RECHTBANK DEN HAAG

Zittingsplaats Amsterdam

Bestuursrecht

zaaknummers: NL17.7662 en NL17.7663

V-nrs: 276.243.7634 en 283.509.2852

uitspraak van de enkelvoudige kamer van 11 oktober 2017 in de zaak tussen

[REDACTED] geboren op [REDACTED] van Guinese nationaliteit, eiseres

mede namens haar minderjarige kind

[REDACTED] geboren op [REDACTED]
(gemachtigde mr. M. Terpstra),

en

de staatssecretaris van Veiligheid en Justitie, verweerder
(gemachtigde mr. J.R. Bekink).

Procesverloop

Bij besluit van 23 augustus 2017 (het bestreden besluit) heeft verweerder de aanvraag van eiseres van 15 april 2016 tot verlening van een verblijfsvergunning voor bepaalde tijd als bedoeld in artikel 28 van de Vreemdelingenwet (Vw) 2000 afgewezen als kennelijk ongegrond op grond van artikel 31 in verband met artikel 30b, eerste lid, aanhef en onder g, van de Vw 2000.

Op 25 augustus 2017 heeft de rechtbank het beroepsschrift van eiseres ontvangen.

Het onderzoek ter zitting heeft plaatsgevonden op 22 september 2017. Eiseres is verschenen, bijgestaan door haar gemachtigde. Verweerder is vertegenwoordigd door zijn gemachtigde. Ter zitting was ook aanwezig M. Jalloa, als tolk. De rechtbank heeft het onderzoek ter zitting gesloten.

Overwegingen

Standpunt van verweerder

1.1 Verweerder stelt zich op het standpunt dat het relaas van eiseres de volgende relevante elementen bevat:

- De identiteit, nationaliteit en herkomst van eiseres;
- Seksuele geaardheid van eiseres.

2. Verweerder gelooft de identiteit en nationaliteit van eiseres. Verweerder gelooft echter niet dat eiseres lesbisch is.

Standpunt van eiseres

3. Eiseres is het hier niet mee eens en voert aan dat zij wel lesbisch is. De relaties die zij heeft gehad zijn geloofwaardig, net als haar huidige relatie met Bintou. Ook heeft zij wel degelijk een bewustwordingsproces laten zien.

Beoordeling door de rechtbank

4.1 De rechtbank is van oordeel dat verweerder het relaas van eiseres op goede gronden ongeloofwaardig heeft geacht. Hierbij heeft verweerder kunnen betrekken dat eiseres vaag en summier heeft verklaard over haar bewustwordingsproces en zelfacceptatie. Eiseres is afkomstig uit een land waar er een diep sociaal, religieus en cultureel taboe op homoseksualiteit rust. Homoseksualiteit is in Guinee ook strafbaar gesteld. Tegen deze achtergrond is het opmerkelijk dat zij in het nader gehoor over haar bewustwording en zelfacceptatie (enkel) verklaart dat zij altijd haar gevoel heeft gevolgd met betrekking tot haar seksuele gerichtheid en er nimmer bij stil heeft gestaan of het goed of niet goed was. Tegelijkertijd heeft zij verklaard een relatie te hebben gehad met een jongen om haar geaardheid voor de buitenwereld te verbergen. In de correcties en aanvullingen op het nader gehoor stelt eiseres dat zij niet boos was op zichzelf, maar op haar omgeving. Het was de enige manier hoe ze zichzelf kon zijn ook al vond haar omgeving dat het niet kon. Dit vond zij moeilijk en maakte haar boos. Deze aanvulling in de correcties en aanvullingen komt niet overeen met wat zij in het nader gehoor heeft verklaard. Zij heeft geen goede verklaring gegeven voor waarom zij hier pas in de correcties en aanvullingen mee is gekomen. Verweerder heeft eiseres daarom kunnen houden aan hetgeen zij in het nader gehoor heeft verklaard. Eiseres heeft verder verklaard dat haar religie LHBT's niet accepteert. Haar antwoorden op nadere vragen hierover zijn ook vaag en summier. Zo heeft eiseres verklaard dat zij wel praktiseert, maar niet volledig. Eiseres stelt dat iedereen zijn geloof anders praktiseert. Zij twijfelt niet of Allah, een God, bestaat, maar zij twijfelt over de regels. Van eiseres mag echter verwacht worden dat zij concreet kan verklaren over de wijze waarop zij haar seksuele gerichtheid heeft beleefd, omdat zij hier vele jaren, iedere dag, mee te maken heeft gehad.

4.2.1 Naar het oordeel van de rechtbank heeft verweerder ook de relaties van eiseres niet geloofwaardig kunnen achten. Over de relatie met Djenne stelt zij dat zij na de zesde klas, de laatste klas van de lagere school, een vaste vriendin, Djenne Traore, te hebben gekregen. Zij heeft twaalf jaar lang stiekem een relatie met deze Djenne heeft gehad en stelt in die twaalf jaar enkel seks met haar gehad te hebben op school. Verweerder heeft het terecht niet aannemelijk geacht dat betrokkene twaalf jaar lang, op verschillende scholen, een intieme relatie kon onderhouden met Djenne zonder dat iemand hier achter is gekomen. Ook heeft eiseres niet verklaard waar deze relatie, afgezien van het fysieke aspect, uit bestond.

4.2.2 In Nederland stelt eiseres een relatie te hebben gehad met een man genaamd Daouda Taore. Eerst waren zij vrienden, maar dit werd later een relatie. Eiseres stelt dat dit niet de bedoeling was, maar zij wist niet hoe in Nederland gedacht werd over lesbische relaties. Zij was bang dat er verkeerd over gedacht zou worden. Daarnaast wist zij niet hoe zij een relatie moest beginnen met een lesbische vrouw. Deze relatie met Daouda zou een paar maanden geduurd hebben. Met verweerder kan de rechtbank niet inzien waarom eiseres een relatie is begonnen met deze man, gelet op het feit dat zij lesbisch stelt te zijn en geen gevoelens voor mannen stelt te hebben. Bovendien kan niet worden gevolgd dat zij niet wist hoe zij een lesbische relatie moest beginnen, omdat zij in het verleden al een lesbische relatie had gehad.

4.2.3 Inmiddels stelt eiseres een relatie te hebben met Bintou. Zij maakt echter niet duidelijk hoe deze relatie zich onderscheidt van haar andere vriendschappelijke relaties met vrouwen, anders dan dat zij samen plekken bezoekt waar andere lesbische vrouwen komen. Daarnaast is eiseres in november 2011 bevallen van een zoon. De vader is ene Frank. Zij is met hem in contact gekomen doordat zij een advertentie had opgehangen bij de Albert Hein, waarop stond dat zij werk zocht. Eiseres stelt dat zij, omdat zij het geld hard nodig had, met deze Frank naar bed is gegaan. Betrokkene heeft hem na deze ene keer nooit meer gezien. Het voorgaande doet verder afbreuk aan de geloofwaardigheid van de seksuele geaardheid van eiseres.

4.4 Gelet op het voorgaande heeft verweerder de seksuele geaardheid van eiseres ongeloofwaardig kunnen achten. Niet is in geschil dat dit de tweede asielaanvraag van eiseres is. Verweerder heeft de asielaanvraag van eiseres daarom terecht afgewezen als kennelijk ongegrond op grond van artikel 31 in verband met artikel 30b, eerste lid, aanhef en onder g, van de Vw 2000.

Conclusie

5. Het beroep van eiseres is ongegrond. Omdat de rechtbank heden op het beroep heeft beslist wijst de rechtbank het verzoek om een voorlopige voorziening af. Voor een proceskostenveroordeling bestaat geen aanleiding.

Beslissing

De rechtbank:

- verklaart het beroep ongegrond;
- wijst het verzoek om een voorlopige voorziening af.

Deze uitspraak is gedaan door mr. A.C. Loman, rechter, in aanwezigheid van mr. W.M. Goncalves Sobral, griffier. De beslissing is in het openbaar uitgesproken op 11 oktober 2017.

griffier

rechter

Afschrift verzonden of digitaal ter beschikking gesteld aan partijen op:

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Conc.: WGS
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