

Switzerland

Executive Summary

Switzerland has one of the highest rates of immigration in Europe. With a fifth of the total population consisting of non-citizens, Switzerland is one of the nations with the largest resident foreign populations for its size.

The federal government has been gradually adapting its policy on foreign nationals and migration to more modern standards taking into account international developments. Its policy is embodied in the Foreign Nationals Act, in force since January 2008.

Key Government Agencies

The Federal Office for Migration (“Bundesamt für Migration” / “Office fédéral des migrations” / “Ufficio federale della migrazione”) is responsible for all concerns related to aliens and asylum in Switzerland.

The Cantonal Migration Authorities are responsible for the extension of visas or the granting of aliens police residence permits and residence permits, among others.

Swiss foreign missions abroad issue different immigration visas, including entry permits for restricted nationalities.

Current Trends

The Federal Law on Foreigners took effect on January 1, 2008. This law replaced the Federal Law on the Right of Temporary and Permanent Residence for Foreigners and applies to persons who are not nationals of European Union or European Free Trade Association.

Under the new law, there remain large restrictions on the employment of foreign nationals from non-EU countries for activities other than those pertaining to specialists, management and qualified personnel. Regulations on salaries, working conditions and limits on visas for third state citizens have to be observed. The Federal Council is negotiating the extension of the agreements regarding the free movement of persons to include Bulgaria and Romania with the European Union.

Business Travel

Foreign nationals not carrying out lucrative activities in Switzerland may remain in the country without a residence or work permit for as long as three months. After three months, foreign nationals are required to leave the country for at least one month. Foreign nationals are not authorized to stay in Switzerland more than six months in a period of twelve months.

This entry permit must be acquired at any Swiss foreign mission in the foreign national's country of residence.

Visa Waiver

Depending on the foreign national's citizenship, the normal requirement of an entry visa may be waived. The countries qualifying for such benefits is subject to change. For current information, please visit www.bfm.admin.ch.

Training

Trainees are eligible for a short-term residence permit. The period of validity is limited to one year. In exceptional circumstances, the period of validity may be extended further by six months.

Trainees are persons aged 18-30 who have completed their occupational training, and want to undergo some advanced occupational or linguistic training in the context of gainful employment in Switzerland. Trainees are subject to rules, which have been laid down in special treaties. Thus, they are subject to special quotas. The legal provisions concerning national priority are not applicable to them.

Trainees should receive salaries comparable to those of host country nationals in the same job and with similar qualifications, and should in any case be able to cover their living expenses.

Employers are free to look for candidates in their own subsidiary companies abroad or through business connections. If they prefer, however, they may ask the government officials responsible for the scheme to help them find suitable trainees for any positions available.

Employment Assignments

Switzerland introduced a dual system of recruiting foreign labor in 1998. Under this system, nationals from EU or EFTA member states, regardless of their qualifications, are granted easy access to the Swiss labor market. Nationals from all other states are admitted in limited numbers, provided that they are well qualified.

Priority

Third state nationals may only be admitted if a person can not be recruited from the labor market of Switzerland or another EU/EFTA member state. Swiss citizens, foreign nationals with a long-term residence permit or a residence permit allowing employment, as well as all citizens from those countries with which Switzerland has concluded the Agreement on the Free Movement of Persons (*i.e.*, the EU and EFTA states) are granted priority. Employers must prove that

they have not been able to recruit a suitable employee from this priority category despite intensive efforts.

Vacant positions must be registered with the Regional Employment Offices together with a request to register the vacancy in the European Employment System (“EURES”). Once a potential employee has been put in contact with the employer and subsequently turned down, the employers generally receive a questionnaire in which they can state the reasons the potential employee was not hired.

In addition, the employer must explain to the authorities why the search for a suitable candidate by means of the recruitment channels used in the specific industry (*e.g.*, specialist journals, employment agencies, online job listings or corporate websites) was not successful. Suitable proof includes job advertisements in newspapers, written confirmation from employment agencies, or other kinds of documentation. Often it is helpful for authorities if the employer submits a brief overview of all candidates with a short explanation of which qualifications for a particular job were lacking. In special cases, the authorities can request an employer to intensify his recruitment efforts.

Salary/Terms and Conditions of Employment Customary in the Region and in the Business

The salary, social benefits and the terms of employment for foreign workers must be in accordance with conditions customary to the region and the particular sector. Some sectors and businesses lay down these conditions in a collective labor agreement which is legally binding either on a national or, at least, cantonal level. When applications are submitted from businesses that do not have a collective labor agreement, the Swiss authorities usually request information directly from the employers’ and employees’ associations on the terms customary in a particular sector. By examining the salary rates and terms of employment beforehand, the authorities can ensure

that foreign workers are not exploited and that Swiss workers are protected against social dumping.

When submitting an application, the employer must enclose an employment agreement that has been signed both by the employer and the employee and that contains a note reading “contract only valid on condition that the authorities grant a work permit.” This provides both contracting parties with legal certainty. It is helpful for the Swiss authorities if the employing business enterprise uses a contract of employment that is customary to the particular sector of industry.

Employers are obliged to register all employees with the various social security institutions.

Foreign employees that do not have a long-term residence permit are subject to tax at source and therefore must be registered with the tax authorities. It is then the responsibility of the employer to deduct the amount of tax each month from the employee’s wage and pay the sum to the tax authorities.

The new Federal Act on Illegal Employment (“LTN”) facilitates, on the one hand, the payment of social security contributions for smaller, employed jobs. On the other hand, it contains new measures and more severe penalties to combat illegal employment. One provision that remains unchanged for both employer and foreign employee is that everyone - whether in paid or unpaid employment - requires a permit.

Non-compliance with the salaries and terms of employment customary to a particular region or sector of industry, as well as black labor are investigated first and foremost by the cantonal authorities or, in some sectors, by offices established mainly for this purpose. Employers found not to comply with the legal requirements will not receive any further work permits for foreign workers.

Personal Qualifications

Executives, specialists and other qualified employees will be admitted. “Qualified employee” means, first and foremost, people with a degree from a university or institution of higher education, as well as several years of professional experience. Depending on the profession or field of specialization, other people with special training and several years of professional work experience may also be admitted.

Besides professional qualifications, the applicant is also required to fulfill certain other criteria, which would facilitate his or her long-term professional and social integration. These include professional and social adaptability, knowledge of a language, and age.

The Swiss authorities examine the applicant’s qualifications on the basis of the curriculum vitae, education certificates, and references. Applicants must submit copies of the original documents, including a translation, if the original documents are not in German, French, Italian, English, or Spanish.

If an applicant comes from a nation whose education system or system of professional training greatly differs from that of Switzerland, it is helpful for the immigration authorities if documents are submitted containing additional information on the institution, the length and the content of the education or training course. Documents that may be helpful include the curriculum vitae and education certificates showing what exams were taken and what the results were.

Exceptions to the Admittance Requirements

Exceptions to the admittance requirements may be granted in specific situations. These are listed below. They are not comprehensive but represent the most frequent circumstances.

Cooperation agreements/projects:

- Joint Ventures
- Service and guarantee work for products from the country of origin
- Temporary duties as part of large projects for companies with headquarters in Switzerland (international assignments)
- Execution of a special mandate

Practical training and further education:

- With professional associations
- With international business enterprises
- In specially defined fields with training programs for small and medium-sized companies
- To take up a temporary teaching position at a university or research institute
- To take up a temporary teaching position at a recognized foreign educational establishment

Transfer of executives or specialists

- within multinationals
- under reciprocity agreements

Difficult recruitment situation in the labor market

- Branches or groups of persons of economic significance who are urgently needed and who are determined by the Federal

Office for Migration in consultation with the competent cantonal authorities and the trade associations involved.

Employment following conclusion of a person's studies

- Highly qualified scientists with a degree obtained in Switzerland in areas or sectors in which there is a lack of potential labor.

Economic and other reasons with lasting effect or influence on the Swiss labor market:

- To open up new markets
- To ensure important economic contacts abroad
- To guarantee export volume
- Formation of an enterprise or expansion of a company that creates long-term jobs for Swiss employees

Family members of Swiss nationals and persons with a long-term residence permit do not require authorization for self-employment. Family members of other foreign nationals staying in Switzerland do require a permit, however.

Accommodation

Foreign nationals may only be admitted for employment if they have suitable accommodation.

EU/EFTA Nationals in Switzerland

EU/EFTA nationals have the right to reside and work in Switzerland.

For the pre-2004 EU member states (EU 15), Malta, Cyprus and EFTA, there are transitional restrictions regarding access to the labour market that have been removed on June 1, 2007.

For the eight Central and Eastern European Members states that joined the EU in 2004, these restrictions will continue to apply until 2011 at the latest.

The Agreement on the Free Movement of Persons is not yet applicable to Bulgaria and Romania. Negotiations on a possible extension are currently under way, but in the meantime, citizens of these two countries are still treated like third country nationals.

Nationals of the EU 15, Malta, Cyprus and EFTA with Employment in Switzerland

A Work and Residence permit is issued if an employment contract or a written confirmation of employment has been submitted, and is valid throughout Switzerland. The permit is not bound to a canton, or to an employer or any particular activity. Permit holders enjoy full geographical and professional mobility. No permission is needed to change jobs; there is only an obligation to register with the communal authorities when moving to a new address. The validity of these permits is determined by the duration of the employment contract.

Employment of Less Than Three Months per Calendar Year

No permit is required. The employer can simply announce the presence of the new employee using the online procedure of the Federal Office for Migration.

Employment Contracts Between 3 Months and 364 Days

A short term permit L EC/EFTA will be issued for the duration of the contract. Upon presentation of a new contract it can be prolonged to a maximum duration of 364 days or renewed.

Employment Contracts of One Year or More (including open ended contracts)

A residence permit B EC/EFTA is issued with an initial validity of five years.

Cross-Border Workers

Workers living in the EU/EFTA and employed in Switzerland can receive a G EU/EFTA frontier worker permit provided that they return home at least once a week. If they stay in Switzerland during the week, they must register with the communal authorities where they are staying.

Settlement Permit (C-EU/EFTA)

The settlement permit is not regulated by the Agreement. It is currently granted to the pre 2004 EU and EFTA nationals after five years of residence in Switzerland, on the basis of settlement agreements or considerations of reciprocity. As currently no such agreements exist for the new EU member states, their citizens receive the C permit after the regular residence period of 10 years. The C permit has to be renewed every five years. It is not subject to restrictions with regard to the labour market, and its holders are practically placed on the same level as Swiss nationals (holders can invoke the freedom of trade and industry), with the exception of the right to vote and elect.

Nationals of Poland, Hungary, Czech Republic, Slovenia, Slovakia, Estonia, Lithuania and Latvia (EU 8) with Employment in Switzerland

Until 2011 at the latest, nationals from these countries are still subject to transitional restrictions regarding access to the labor market. Work permits are subject to:

- Economic needs test - A permit is only granted if no equivalent person is already available on the Swiss labour market;
- Control of wage and working conditions - a permit is only granted if local wage levels and working conditions are respected;
- Quota - a permit is only granted if the respective quota for the L or B permit has not yet been used up. Frontier worker permits and permits with a validity of less than four months are not subject to a quota; and
- Cross-Border workers must live and work within the so called cross-border zone on both sides of the Swiss border. The cantonal authorities provide details on these zones.

Except for the frontier zone rule, these restrictions only apply to first time admissions. Once admitted to the labour market, EU 8 nationals can also benefit from full professional and geographical mobility. Apart from the specific restrictions above, EU 8 nationals have the same rights and obligations as all other EU/EFTA nationals.

Nationals of all EU/EFTA Countries Planning to Start a Business in Switzerland

The rules for independent entrepreneurs are the same for nationals of all EU and EFTA member states. As the Agreement on the Free Movement of Persons is not yet applicable to Bulgaria and Romania, this is not yet the case for citizens of these countries.

EU/EFTA nationals wishing to start a business in Switzerland can apply for a five-year B EU/EFTA permit with the respective cantonal authorities. This permit will be granted if there is proof of an effective independent activity. The cantonal authorities determine what documents must be presented. As a general rule, these include some or all of the following: business plan, proof of capital for starting the business, proof of specific preparations for launching the business like rental agreements for real estate, a registration with the register of commerce.

Nationals of Third States in Switzerland

Permit B: Residence Permit

Resident foreign nationals are foreign nationals who are resident in Switzerland for a longer period of time for a certain purpose with or without gainful employment.

As a rule, the period of validity of residence permits for third-country nationals is limited to one year when the permit is granted for the first time. First-time permits for gainful employment may only be issued within the limits of the ceilings and in compliance with the Federal Act on Foreign Nationals (“Letr”). Once a permit has been granted, it is normally renewed every year unless there are reasons against a renewal, such as criminal offences, dependence on social security or the labor market. A legal entitlement to the renewal of an annual permit only exists in certain cases. In practice, an annual permit is normally renewed as long as its holder is able to draw a daily allowance from the unemployment insurance. In such cases, however, the holder is not actually entitled to a renewal of the permit.

Permit C: Settlement Permit

Settled foreign nationals are foreign nationals who have been granted a settlement permit after five or ten years’ residence in Switzerland.

The right to settle in Switzerland is not subject to any restrictions and must not be tied to any conditions. The Federal Office of Migration fixes the earliest date from which the competent national authorities may grant settlement permits.

As a rule, third-country nationals are in a position to be granted a settlement permit after ten years' regular and uninterrupted residence in Switzerland. U.S. nationals are subject to a special regulation. However, third-country nationals have no legal entitlement to settlement permits. Apart from the provisions of settlement treaties, such a claim can only be derived from the LEtr. Persons who hold a settlement permit are no longer subject to the Limitation Regulation, are free to choose their employers, and are no longer taxed at source.

Permit Ci: Residence Permit with Gainful Employment

The residence permit with gainful employment is intended for members of the families of intergovernmental organizations and for members of foreign representations. This concerns the spouses and children up to 25 years of age. The validity of the permit is limited to the duration of the main holder's function.

Permit G: Cross-Border Commuter Permit

Cross-border commuters are foreign nationals who are resident in a foreign border zone and are gainfully employed within the neighboring border zone of Switzerland. The term "border zone" describes the regions which have been fixed in cross-border commuter treaties concluded between Switzerland and its neighboring countries. Cross-border commuters must return to their main place of residence abroad at least once a week.

Permit L: Short-Term Residence Permit

Short-term residents are foreign nationals who are resident in Switzerland for a limited period of time - usually less than a year - for a certain purpose with or without gainful employment.

Third-country nationals can be granted a short-term residence permit for a stay of up to one year, provided the quota of the number of third-country nationals staying in Switzerland has not been met. This is fixed annually by the Federal Council. The period of validity of the permit is identical with the term of the employment contract. In exceptional cases, this permit can be extended to an overall duration of no more than 24 months if the holder works for the same employer throughout this time. Time spent in Switzerland for a basic or advanced traineeship is also considered short-term residence. Permits issued to foreigners who are gainfully employed for a total of no more than four months within one calendar year are not subject to the quota regulation.

Permit F: Provisionally Admitted Foreigners

Provisionally admitted foreign nationals are persons who have been ordered to return from Switzerland to their native countries, but in whose cases the enforcement of this order has proved inadmissible (*e.g.*, violation of international law), unreasonable (*e.g.*, concrete endangerment of the foreign national), or impossible for technical reasons of enforcement. Thus, their provisional admission constitutes a substitute measure. Provisional admission may be ordered for a duration of 12 months and be extended by the canton of residence for another twelve months at a time. The cantonal authorities may grant provisionally admitted foreign nationals work permits for gainful employment irrespective of the situation on the labor market and in the economy in general. A residence permit granted at a later date is subject to the provisions of the LEtr.

Other Comments

Holders of an EU/EFTA permit are entitled to family reunion, regardless of the nationality of their family members. Qualifying family members may include the spouse, registered partner in homosexual couples, and children under 21. The parents and children over 21 also qualify, if financially dependent on the main permit holder. If family members of EU/EFTA nationals do not have EU/EFTA nationality, they may be subject to visa requirements when entering Switzerland before having received their family reunion permits.