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Switzerland: Trends and Developments

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Trends and Developments

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Main Trend: the Swiss Immigration Authorities Continue to Take a Pragmatic Approach to Issuing Work Permits

Introduction

Swiss immigration policy has traditionally been marked by a pragmatic and flexible approach that allows companies to operate effectively in Switzerland.

Despite the recent worldwide economic downturn, the Swiss immigration authorities continue to take this pragmatic and flexible approach to issuing work permits, in order to ensure that Switzerland remains a country in which it is easy to do business and in which companies are able to obtain work permits for the highly skilled workers and specialists needed to carry out their business activities. Moreover, the number of permits that may be issued (ie, the quotas) was not reduced for 2023 (see *Swiss immigration system* below).

However, the recent Credit Suisse debacle will likely have ripple effects across the Swiss banking and finance sectors, and could lead to major layoffs both at Credit Suisse and at Credit Suisse's partners. Against this background, the Swiss immigration authorities may take protective measures to safeguard local jobs and become more restrictive with regard to work per-

mits issued to companies active in the banking and finance sectors.

In this context, this article provides an overview of recently introduced new measures and practices facilitating the issuance of work permits to non-European Union (EU) and non-European Free Trade Association (EFTA) citizens that demonstrate the Swiss immigration authorities' pragmatic and flexible approach; it also provides a summary of other important trends and potential future trends.

Swiss immigration system

On 1 June 2002, the Agreement on the Free Movement of Persons (AFMP) concluded with the EU and the EFTA entered into force.

Since then, a dual immigration system has existed in Switzerland, with a stark difference between the requirements for issuing work permits to EU citizens and EFTA citizens, and those for everyone else (with certain exceptions, such as for individuals with settled status or those who benefit from family reunification).

It also should be noted that an employer who wants to hire a non-Swiss employee will generally apply for one of the two primary types of work permits:

- a short-term permit (L permit), which is issued for up to one year, but can be extended or transformed into an ordinary permit; or
- an ordinary permit (B permit), which is usually issued for at least one year, and may be renewed.

EU citizens and EFTA citizens

Under the AFMP, EU citizens and EFTA citizens benefit from special rights. In particular, in principle, they have a right to work in Switzerland, without additional conditions needing to be fulfilled. They may also start working as soon as the work permit application has been submitted and do not need to wait for approval. It should be noted that other rules currently apply to Croatian citizens (see *Reintroduction of quotas for Croatian citizens*, below).

Moreover, if they live in a neighbouring country (ie, cross-border employees), EU citizens and EFTA citizens may receive a cross-border permit (G permit) to work in Switzerland. With the exception of Croatian citizens, EU citizens and EFTA citizens are not usually subject to quotas in Switzerland.

It should be noted that the above does not apply with regard to posted workers, as the AFMP does not fully cover cross-border services.

As mentioned above, the number of permits that may be issued was not reduced for 2023; for 2023, the number of permits that may be issued to EU citizens and EFTA citizens posted to Switzerland is as follows:

- short-term permits (L permits): 3,000; and
- ordinary permits (B permits): 500.

Third-country citizens (ie, non-EU citizens and non-EFTA citizens)

In general, the following conditions must be fulfilled in order for third-country citizens to be granted a work permit:

- the employment is in the economic interest of Switzerland (it creates new jobs, it will increase the company's taxable revenue, etc);
- a Swiss employer makes a request;
- the quotas are respected;
- no suitable candidates exist on the local market (which includes Switzerland, the EU and other EFTA countries) – in order to demonstrate that this condition is fulfilled, the employer will have to show proof that a job search was carried out;
- the person is a manager, executive or specialist, or is otherwise qualified (ie, has the appropriate degrees, linguistic qualifications, additional training, etc, for the position);
- the employee's remuneration and working conditions will be standard for the place where the employee will be carrying out their employment activity; and
- the employee shall have appropriate housing.

As the number of permits that may be issued was not reduced for 2023, the number of work permits that may be issued to non-EU citizens and non-EFTA citizens, with the exception of British citizens, is as follows:

- short-term permits (L permits): 4,000; and
- ordinary permits (B permits): 4,500.

Separate, special quotas exist for British citizens (see *Brexit* below), and special quotas for Croatian citizens were reintroduced in 2023 (see *Reintroduction of quotas for Croatian citizens*, below).

It also should be noted that, in principle, third-country citizens may only receive a cross-border permit (G permit) to work in Switzerland if certain very strict conditions are met. In particular, they must:

- have held a valid residence permit in the neighbouring country for at least six months;
- fulfil the local market conditions mentioned above; and
- live in certain bordering regions of the neighbouring country.

New measures and practices

Flexibility for sectors experiencing a shortage of skilled workers

As mentioned above, when employers want to hire non-EU citizens or non-EFTA citizens, they must generally demonstrate that several requirements are fulfilled, including that no suitable candidate can be found on the local market and that the candidate they wish to hire is suitably qualified for the position.

However, exceptions exist for sectors that are experiencing a shortage of skilled workers. Employers recruiting employees in these sectors do not need to show that no suitable candidate can be found on the local market, and benefit from more flexibility with regard to the authorities' review of employees' qualifications.

Given the current market conditions, the list of sectors benefiting from these exceptions was expanded as of 1 February 2023, and currently includes the following.

- Managers in the following fields:
 - (a) information technology and communications;
 - (b) consulting;
 - (c) finance and insurance;

- (d) machinery;
- (e) electrical equipment and metallurgy;
- (f) chemical and pharmaceutical production; and
- (g) the food industry.
- Engineers, scientists and researchers in the following fields:
 - (a) mathematics; and
 - (b) natural and technical sciences.
- Information and communication specialists.
- The following health professionals:
 - (a) medical specialists;
 - (b) medical assistants;
 - (c) specialised nursing staff (eg, surgical care, acute care, nursing care and emergency care); and
 - (d) radiology assistants.
- Teaching staff at universities.

Simplified work permit approval procedure

As of 1 February 2023, ordinary work permit applications, including ordinary work permit applications for non-EU and non-EFTA citizens, are only subject to approval from the cantonal immigration authorities. Previously, approval was also required from the federal immigration authorities.

Intragroup transfers

Special exceptions apply with regard to certain intragroup transfers. In particular, the Swiss Federal Act on Foreign Nationals (FNA) and related ordinances stipulate that it is not necessary to show that no suitable candidate can be found on the local market in the case of an intragroup transfer of a senior manager or a specialist (ie, someone who has specialised knowledge and experience), although, in practice, the immigration authorities also require that this person was already employed by the group for at least one year.

In 2023, the federal immigration authorities updated their directives to state that the interpretation of this exception should be broadened to include managers and other individuals with significant responsibility and decision-making power within the company.

Other Trends

Brexit

Employers should be aware that British citizens who were not exercising rights under the AFMP on 31 December 2020 do not enjoy the special rights afforded to EU citizens and EFTA citizens under the AFMP; therefore, the ordinary requirements apply. Moreover, the ordinary restrictions apply with regard to engaging cross-border employees (eg, British citizens residing in France – see *New measures and practices* above). In addition, the employee may not start working from Switzerland prior to receiving authorisation to do so (unlike EU citizens and EFTA citizens, who may start working from Switzerland as soon as they apply for a work permit).

Furthermore, there is a quota regarding the number of work permits issued to British citizens, which is separate to the quota applied to other non-EU citizens and non-EFTA citizens. For 2023, the number of work permits that can be issued to British citizens is as follows:

- short-term permits (L permits): 1,400; and
- ordinary permits (B permits): 2,100.

Reintroduction of quotas for Croatian citizens

As of 1 January 2023, there is once again a quota regarding the number of work permits issued to Croatian citizens.

This decision was made pursuant to the Safeguard Clause of the AFMP, which provides for a gradual opening of the Swiss market to Croatian

citizens, and permits Switzerland to reintroduce quotas if the number of Croatian citizens applying for work permits reaches a certain threshold.

However, it should be noted that, as is the case for British citizens, a separate quota applies with respect to Croatian citizens. For 2023, the number of work permits that can be issued to Croatian citizens is as follows:

- short-term permits (L permits): 1,007; and
- ordinary permits (B permits): 1,150.

New rules for traineeships and apprenticeships

Indonesia

Switzerland has concluded agreements with 34 countries to facilitate the free movement of trainees. The most recent agreement is with Indonesia, pursuant to which Indonesian citizens between the ages of 18 and 35, with suitable vocational training, now may be granted work permits via a simplified procedure to carry out a traineeship in Switzerland. This traineeship may last a maximum of 18 months.

Ukraine

Individuals who fled the war in Ukraine and were granted special protection status (Protection Status S) already benefit from certain exceptions regarding work permits. In particular, it is not necessary to show that no suitable candidate can be found on the local market. However, the situation after this special protection status is lifted is not entirely clear, which has made some employers hesitant to employ individuals with this special protection status.

In March 2023, some clarity was provided with regard to individuals between the ages of 15 and 20 with this special protection status. If such individuals are enrolled in an apprenticeship,

they may remain in Switzerland and complete their apprenticeship, even if this special protection status is lifted prior to the apprenticeship being completed.

Home office and cross-border employees

Technical and generational changes, greatly accelerated by the COVID-19 pandemic, have led to a rapid increase in home office use by employees. In this context, it is important for employers to keep in mind that when cross-border employees (ie, employees who live in a different country from the one in which their employer is located) make use of a home office, it is necessary to ensure that they have the proper work permits allowing them to carry out work from both countries.

The question of cross-border employees has particular importance for Swiss employers, as Switzerland's geography (ie, a small, landlocked country) means that this situation comes up often.

A host of other issues that are beyond the scope of this article but still merit particular attention may arise when cross-border employees make use of a home office, including:

- social security;
- taxes;
- governing law and jurisdiction; and
- data protection.

Future Trends

Students

Switzerland is moving towards introducing measures that would make it easier for foreign graduates (non-EU citizens and non-EFTA citizens, as EU citizens and EFTA citizens may already do so) of Swiss universities to remain in Switzerland and work after graduation.

On 16 March 2023, a bill providing for this possibility was approved by the National Council (lower house of parliament). The bill now moves to the Council of States (upper house of parliament).

Data protection

Although beyond the scope of this article, in light of the importance of data protection rules with regard to cross-border employment relationships it should be noted that revamped data protection rules will enter into force in Switzerland on 1 September 2023.

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