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BUSINESS IMMIGRATION

Business immigration in Switzerland: overview

Dr. Ueli Sommer, Dr. Philippe Nordmann and Simone Wetzstein, Walder Wyss Ltd., Attorneys at Law

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RELEVANT GOVERNMENTAL ENTITIES

1. What are the relevant government entities (agencies, departments, branches, bodies, and so on) relating to immigration in your jurisdiction?

Overview

Switzerland has a dual system for granting residence and/or work permits to foreign nationals. Different requirements apply to the following:

- Citizens of the EU member states before the 2007 enlargement (Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and the UK) (EU-25).
- Citizens of Bulgaria and Romania (with quota restrictions) (EU-2, the EU-27 together with the EU-25).
- Croatia (with quota and additional restrictions) (all together EU or EU-28).
- Citizens of the European Free Trade Association (EFTA) member states (Iceland, Liechtenstein and Norway).

Third-state citizens (that is, citizens of states which are neither an EU nor an EFTA state) are dealt with under separate rules.

Generally, every person or entity willing to pursue a gainful activity or live in Switzerland must be authorised by the competent authority to do so. While the nationality of the applicant is one factor, different requirements and procedures apply depending on the duration of the intended stay and the purpose of the stay.

EU/EFTA citizens

Entering Switzerland. In principle, citizens of EU-28/EFTA states can freely enter Switzerland without any visa requirement (however, they must still present a valid personal identification, such as an ID card or passport). They must not pose any threat to public order and security nor be expelled from Switzerland. When entering as a family member of an EU-28/EFTA citizen, each family member must have a residence permit from a Schengen country or a visa.

Staying and working in Switzerland. The Agreement on the Free Movement of Persons allows citizens of EU/EFTA states to reside and work in any other EU/EFTA state. However, there are certain notification and authorisation obligations once a citizen of an EU/EFTA state has entered Switzerland (*see Question 4, EU/EFTA citizens*):

If a person wants to pursue a gainful activity of up to 90 days within one calendar year, a simplified procedure (notification procedure (*Meldeverfahren*)) applies.

If a person intends to work in Switzerland or stay for more than three months and does not benefit from the notification procedure, he or she must obtain a work and/or residence permit to do so. To obtain a permit, EU/EFTA citizens must notify the relevant Residents' Registry Office within 14 days after entering Switzerland.

When assessing the possible notification and authorisation obligations and details, it is necessary to further differentiate between:

- Employees.
- Self-employed persons.
- Posted employees.
- Dependants.

See *Question 9*.

Furthermore, it is necessary to observe restrictions with regard to Bulgaria, Romania and Croatia (*see below and Question 4*).

For the requirements and procedure to receive permanent residence and Swiss citizenship, see *Question 10*.

EU-2 (Bulgaria and Romania). Bulgarian and Romanian citizens (EU-2) are subject to quotas if they apply for a type B EU/EFTA residence permit, while citizens of EU-25/EFTA states are entitled in principle to receive a work permit (full freedom of movement) (*see Question 4, EU/EFTA permits* for the different permit types). This applies to Bulgarian and Romanian citizens intending to enter into an employment contract with a duration of at least 364 days or with an unlimited duration, or that intend to be self-employed in Switzerland. This quota restriction started on 1 June 2017 and will end on 31 May 2018. In this period a maximum of 996 type B permits will be granted quarterly (that is, 249 permits are available every three months).

Croatia. Croatian citizens can only obtain a work permit if additional requirements are met (*see Question 4, EU/EFTA citizens*). This includes the priority requirement (*see Question 8*), that is, foreigners and Swiss citizens already admitted to the Swiss labour market must be given priority when filling an open position, and salary and working conditions must be monitored. In any case, regardless of the duration of the intended stay, a work permit must be obtained before starting a new gainful activity. Posted employees of Croatian companies and self-employed persons can benefit from the simplified notification procedure for short-term stays up to 90 days per calendar year.

Third-state nationals

Entering Switzerland. Third-state citizens can enter Switzerland only if they:

- Present a travel document valid for at least three months after the intended date of departure from Switzerland and issued not more than ten years ago.
- Have obtained a visa (if applicable).

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- Demonstrate the purpose and circumstances of the stay.
- Have sufficient financial resources available to cover the entire duration of the stay and the return trip to the country of origin (and possible transit trips).
- Are not listed on the Schengen Information System or national database.

Staying and working in Switzerland. Strict conditions apply for an applicant to be granted a residence or work permit (*see Question 4, Third-state nationals*).

Generally, in determining what kind of work permit a third-state national requires there is a difference between:

- Employees.
- Self-employed persons.
- Dependants (*see Question 9*).

Any third-state national applicant must file a request before entering Switzerland that will be screened by the relevant cantonal employment service, which makes a preliminary decision. Applications approved by the cantonal employment service are forwarded to the State Secretariat for Migration (SEM) for a second approval. Once the SEM has approved a request, it will forward the application to the Cantonal Migration Authority in charge. If the Cantonal Migration Authority issues the third approval, it will advise (by consent of the SEM where people from nations subject to visa requirements are concerned) the appropriate Swiss diplomatic representation abroad to issue a visa. Applicants for a work and/or residence permit must collect their visa at that specific Swiss diplomatic representation.

See *Question 10* for the requirements and procedure to receive permanent residence and Swiss citizenship.

Administration

EU/EFTA citizens can enter Switzerland without visas, residence or work permits, while third-state nationals must have already obtained a visa, residence and/or work permit before entering Switzerland. Both EU/EFTA nationals and third-state nationals must register at the Residents' Registry Office in charge within 14 days after entering Switzerland.

The Residents' Registry Offices are organised on a communal level and the relevant office will be the one located in the area where the person lives. The registration is done at the local community office (*Gemeindebüro/maison communale*) in the rural areas or at an area office (*Kreisbüro/bureau d' arrondissement*) in cities. Larger cities sometimes have a special residence registration department (*Einwohnerkontrolle/contrôle d' habitants*).

Once the foreign national has registered with the Residents' Registry Office in charge, it will forward all the documents received to the Cantonal Migration Authority. The Cantonal Migration Authority will then issue the residence and/or work permit for the EU-25/EFTA citizen or the third- state national who has obtained a visa (*see above, Overview*).

The Cantonal Employment Service is mainly involved with granting work permits to a third-state national. It also runs assessments of employment relationships for citizens of Croatia when applying for a work permit in Switzerland for the first time.

SEM is responsible for the:

- Control of permits which were granted to citizens of EU and EFTA states.
- Approval of the first application for a sole residence permit (without an authorisation to work) of citizens of EU/EFTA member states.
- Consent procedures relating to the work and/or residence permits for third-state nationals.

Enforcement

The Cantonal Migration Authority is the first instance authority for enforcement of immigration matters. It initiates measures and actions applicable to foreign individuals, who have forfeited their right of residence and failed to leave the country on a voluntary basis. Decisions of the Cantonal Migration Authority are open to challenge before the relevant cantonal courts and can be appealed before the Swiss Federal Supreme Court.

A Swiss employer that employs EU/EFTA or third-state nationals without a valid work permit can be punished by:

- Imprisonment for up to three years.
- A fine of up to CHF1.08 million.

The employer may also not be granted any work permits for foreign employees in the future.

If the notification procedure is breached (for example, if an employee is working in Switzerland without a registration), the employer can be fined up to CHF5,000. If the fine remains unpaid, the Swiss authorities can prohibit the employer from providing services in Switzerland or from posting employees. A foreign employer can also be banned from posting employees to Switzerland if it repeatedly fails to register its posted employees under the notification procedure.

Legislative

The right of residence in different cantons and in Switzerland is governed by federal law, prepared and passed by the United Federal Assembly. The federal laws can enable the Swiss Federal Council to issue ordinances which include more detailed provisions.

SOURCES AND CONFLICTS OF LAW

Sources of law

2. What are the principal sources of law relating to immigration in your jurisdiction?

Domestic policy and guidance

Switzerland has a dual system for granting foreign nationals' residence and/or work permits that differentiate between EU/EFTA citizens and third-state nationals (*see Question 1*). Therefore, the legal provisions that are applicable to business immigration in Switzerland can be complex. The cantons have separately issued instructions and guidance for interpretation on the applicable regulations for immigrating to each respective canton, and the State Secretariat for Migration (SEM) has also issued several detailed directives on the legal provisions applicable to foreign nationals relocating to Switzerland.

Domestic statutes, rules and regulations

While the admission, residence and business immigration of EU/EFTA citizens is governed by the Free Movement of Persons Agreement between the EU and Switzerland (*see Question 2, International law and international treaties*), third-state nationals can only be admitted if they meet the requirements of the applicable Swiss legislation, mainly the Federal Act on Foreign Nationals and the Decree on Admittance, Residence and Employment.

Case law

The Federal Act on Foreign Nationals provides for a general hardship clause which refers to foreign individuals who do not meet the requirements to obtain or maintain a residence and/or work permit. The clause provides exceptions from the requirements to obtain/maintain a permit in case of a "severe personal hardship".

The Swiss Federal Council has developed extensive case law concerning the question of how to determine whether foreign individuals are in severe personal hardship. Permits granted on personal hardship reasons are regarded as exceptions based on

consideration of humanitarian need. Therefore, the term is interpreted in a very restrictive way. The foreign individual's personal situation must be different from the average situation of other foreign nationals. The immigration authorities must not consider whether the stay in Switzerland is legal or illegal when deciding on a case of personal hardship. The authorities take into account the following factors:

- How well the applicant is integrated.
- The applicant's compliance with Swiss law.
- The applicant's family and financial situation.
- The applicant's efforts to participate in Swiss economic life.
- The proposed duration of stay in Switzerland.
- The applicant's state of health.
- The ability to re-integrate into the country of origin.

International law and international treaties

On 21 June 1999, the EU and Switzerland signed seven bilateral agreements including the Agreement on the Free Movement of Persons, which came into force on 1 June 2002. The same rules also apply to citizens of EFTA member states. The right to free movement is complemented by the:

- Mutual recognition of professional qualifications.
- Right to buy real estate.
- Co-ordination of social security systems.
- By way of three protocols (Protocols I to III) the Agreement on the Free Movement of Persons was extended to cover the new EU member states. Most recently, Romania, Bulgaria and Croatia joined the EU and certain restrictions apply to them (*see Question 1, Overview* and *Question 4)*.

Conflicts of law

3. What potential conflicts (if any) arise between the various sources of law?

Both the Foreign Nationals Act and the Agreement on the Free Movement of Persons provide for a right of family reunification (*see Question 10, Family reunification*). This enables citizens covered by these acts to move their direct family to Switzerland.

Under the Agreement on the Free Movement of Persons, an EU/EFTA citizen can move the following family members to Switzerland:

- Spouse.
- Children (if they are under the age of 21 or receive support).
- Parents or grandparents.
- Spouse's parents or grandparents.

This applies regardless of the nationality of these family members.

In contrast, under the Foreign Nationals Act, the family reunification covers only children under 18 years old and the spouse.

As a result, within the framework of the family reunification, EU/EFTA citizens can move their parents and grandparents to Switzerland regardless of their citizenship; however, Swiss citizens can only move their parents, if the parents hold an EU/EFTA citizenship or permanent residence permit of an EU/EFTA member state. If they hold a citizenship of a third state, they must apply for a permit themselves (for example, as a pensioner).

The Swiss Federal Court is aware of this discrimination against Swiss citizens compared to EU/EFTA nationals but does not have the power to change it. The Swiss Parliament does not currently intend to amend the law. Various cases addressing the issue have been brought before the Swiss Federal Court, which has always stated that it cannot rule against what is clearly stated in the law. Recently, the Swiss Federal Court indicated that it would not change its opinion before a judgement of the European Court for Human Rights is passed condemning Switzerland for discrimination against Swiss people regarding the right to family reunification (*BGE 136 II 120*).

BUSINESS IMMIGRATION

Unsponsored business-related immigration

4. What are the primary options available for unsponsored work and investment in your jurisdiction?

There are no differences between unsponsored or sponsored business-related immigration in Switzerland, but there is a dual system for granting work permits for foreign nationals. The admission and residence of EU/EFTA citizens is governed by the Free Movement of Persons Agreement between the EU and Switzerland, and third-state nationals are admitted if they meet the requirements of the Foreign Nationals Act. In addition to taking into account the nationality of the person in question, the activity pursued (such as employment, self-employment, posting), the duration of the stay must also be considered when determining the applicable rules. See *Question 1, Overview* for the requirements to enter Switzerland,

EU/EFTA citizens

Regular work permits. Under the Free Movement of Persons Agreement, citizens of an EU-25/EFTA member state are treated like Swiss citizens. They can take up residence in Switzerland and pursue gainful employment or live on their own means.

EU-2 citizens (Bulgaria and Romania) are covered by the Agreement as well, but quota restrictions apply (*see Question 1, Overview*).

Since 1 January 2017, Croatia is a party to the Agreement too. However, certain transitional restrictions of Protocol III to the Agreement apply (*see Question 1, Overview* and *Question 4, Croatia*). In principle, Croatian citizens intending to carry out a gainful activity (such as employment) in Switzerland must obtain a work permit in any case, even if they intend to perform an activity of less than 90 days per calendar year,

To work in Switzerland for more than 90 days per calendar year, EU-27/EFTA citizens must, in principle:

- Have a passport and a copy of their employment agreement.
- Not be considered a threat to Swiss internal or external security.
- Register with the relevant Residents' Registry Office within 14 days of entering Switzerland (*see Question 1*).
- Obtain a quota spot (in case of EU-2).
- For Croatian citizens the following additional requirements apply:
- A quota spot must be obtained, although Croatian citizens staying up to four months are not subject to the quota restriction of Protocol III to the Agreement on the Free Movement of Persons if they satisfy the requirements under the Federal Act on Foreign Nationals (see *below, Third-state nationals*).
- A work permit must be granted before starting a job in Switzerland, even if the employment lasts for less than 90 days per calendar year.
- There must be compliance with the priority principle for already admitted foreign and Swiss employees. It must be proven that no suitable Swiss national or EU-27/EFTA national could be found for the vacant position.

- There needs to be assessment of the salary and working conditions, which must comply with Swiss minimum standards for salary and working conditions.

Different requirements apply to EU/EFTA citizens who want to pursue a self-employed activity (*see below, Self-Employment*).

Notification procedure. In case of short-term (that is, up to 90 days per calendar year) gainful activities, EU-27/EFTA citizens can benefit from the simplified online notification procedure. The notification procedure is an online registration procedure which the employer can go through.

EU-27/EFTA citizens intending to start a temporary position of up to 90 days in Switzerland can benefit from the notification procedure.

Under the notification procedure, employees must be registered before they start working in Switzerland. Registration must take place at least eight days before the employee takes up work in Switzerland. Generally, registration is required for work lasting no more than eight days per calendar year.

However, for the following industries registration is always (that is, from the first day) compulsory:

- Construction and secondary contract work.
- Gardening and landscaping.
- Hospitality.
- Cleaning in companies and households.
- Monitoring and security services.
- Itinerant trade (except for trade fairs and circuses).
- Erotic services.

For Croatian citizens, the notification procedure is only applicable to general industries. For the following "sensitive industries", Croatian citizens must have a work permit before starting their employment and cannot benefit from the online procedure:

- Construction and secondary contract work.
- Gardening and landscaping.
- Commercial cleaning.
- Monitoring and security services.

For these industries the cantonal authorities must ensure compliance with the requirements under the Federal Act on Foreign Nationals (*see below, Third-state nationals*).

Posted employees and self-employed service providers. In addition to EU-27/EFTA citizens that intend to work for up to 90 calendar days in Switzerland, the following EU-27/EFTA posted employees and EU/EFTA self-employed business providers can also benefit from the notification procedure (*see above*) for employees:

- Posted employees of a company domiciled in an EU-27/EFTA state. Third-state nationals can also benefit from the notification procedure when posted by an EU-27/EFTA company if they are directly employed and have held a valid EU-27/EFTA work permit for at least 12 months. A company can only post its own employees and not temporary workers (for example, hired from an agency).
- Self-employed EU-27/EFTA service providers that are domiciled in an EU-27/EFTA state.
- Self-employed Croatian service providers domiciled in an EU-27/EFTA state and posted employees of Croatia-domiciled companies (does not apply to sensitive industries, *see above, Notification procedure*).

The notification procedure applies only if the work does not exceed 90 individual working days per calendar year per company or self-employed service provider (on an aggregate basis) are not exceeded.

The exceptions above also apply to posted employees and self-employed service providers.

EU/EFTA permits. For EU/EFTA citizens who cannot use the online notification procedure and do not qualify as a business visitor (business visitors do not need to register at all (*see below, Business visitors*)), the following work permits are available:

- Type L EU/EFTA (short-term residence permit): a permit for up to a year, usually issued if the foreign national has an employment agreement for less than 12 months.
- Type B EU/EFTA (residence permit): a permit for up to five years and extendable issued if the foreign national can demonstrate an employment agreement for at least 365 days or an unlimited duration.
- Type G EU/EFTA (cross-border commuter permit): for those who live in an EU/EFTA member state but work in Switzerland. If the employment agreement is for less than a year, the permit lasts as long as the contract; if the agreement is for 12 months or more, the permit is valid for five years. If the employment agreement is for less than 90 days, the notification procedure (*see above*) applies.
- Type C EU/EFTA (settlement permits): allows staying in Switzerland indefinitely although the status needs to be confirmed every five years. The permit can be granted after living in Switzerland for:
  - five years, if the applicant is from Austria, Belgium, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, The Netherlands, Portugal, Slovakia, Slovenia and Spain (EU-17) or an EFTA member state; or
  - ten years, if the applicant is from another EU states.

Third-state nationals

Regular work permits. Unlike EU/EFTA citizens, third-state nationals are subject to strict requirements when they enter, stay and work in Switzerland. The main differences are that third- state nationals:

- Must obtain a visa before they enter Switzerland.
- Must obtain a work and/or residence permit before they enter Switzerland.
- Are generally eligible for work permits only if they are qualified professionals.

Generally, no work permit is required for work that lasts no more than eight days per calendar year. However, employees must always have a work permit for the following industries:

- Construction and secondary contract work.
- Hospitality.
- Commercial and residential cleaning.
- Gardening and landscaping.
- Monitoring and security services.
- Itinerant trade (except for trade fairs and circuses).
- Erotic services.

Under the Foreign Nationals Act, third-state nationals must pass through a multi-level procedure on a cantonal and federal level to obtain a work and residence permit (*see Question 1, Third-state nationals*). Cantonal quotas limit the number of permits that can be issued.

Third-state nationals are granted access to the Swiss labour market only if:

- The applicant has validly entered Switzerland (*see Question 1, Overview*).
- The activity is in the general interests of the economy.
- The future employer has submitted an application.
- The yearly quotas for permits have not yet been exhausted.
- It is proven that no suitable Swiss national or EU/EFTA national could be found for the vacant position (priority requirement) (*see Question 8*).
- The salary and working conditions are in accordance with the conditions customary to the region and the particular sector.
- The personal requirements are fulfilled. Residence permits can only be issued to qualified professionals such as managers, specialists and so on.
- The employee has adequate accommodation (either bought or rented).

In addition, a sustainable integration into the Swiss employment market and the social environment of the applicant must be expected based on various factors, including language abilities. In some cases, not all personal requirements must be met. For example, a residence and work permit can be issued in case of management transfers within international companies, even if the relevant person is not fluent in one of the Swiss national languages (German, French, Italian and Rhaeto-Romanic).

A third-state national will be allowed to start working when he or she has been:

- Admitted to the Swiss employment market.
- Registered with the Residents' Registry Office in charge.

Posted employees and self-employed service providers. No simplified procedure (such as the notification procedure in the EU/EFTA context) is available to posted employees by third-state companies or self-employed service providers of third states. Therefore, the regular work permits procedure (*see above, Third-state nationals: Regular work permits*) generally applies.

However, if a work permit is requested because of project work of a specialist for up to four months/120 days or because of an intra-group transfer of executives, the chances that a work permit will be granted are reasonable. For intra-group transfers, work permits are granted only if the respective executive has been working with the third country company for at least one year at the time of making an application.

For short-term projects, a short-term permit of up to four months or up to 120 days per calendar year (if multiple entries are required) can be granted. Such short-term permits are not subject to annual quotas so the chances for receiving this kind of permit are higher. For longer projects a short-term permit can be issued for a maximum of 12 months. In exceptional cases, the permit can be renewed for a maximum of 12 months based on a well-founded application, unless there is a change of employer. These kinds of permits are subject to annual quotas.

Work permits. The following work permits can be granted to third-state nationals:

- Permit L (short-term residence permit). This permit allows staying in Switzerland for up to one year. It is tied to the terms of the employment contract and can be extended for a further year.
- Permit B (initial or temporary residence permit). This permit is valid for one year but can be extended annually, as long as there are no reasons for it not to be reissued, such as being a recipient of welfare benefits. These permits are issued on a quota basis and are tied to the same employer. The permits often specify that the third-state national lives in the canton that issued the permit and cannot move out of that canton.
- Permit C (settlement permit). This permit is for third-state nationals, who have lived in Switzerland for ten years. US and Canadian citizens can apply for a settlement permit after five years in Switzerland.

Self-employment

EU/EFTA citizens. EU-28/EFTA citizens who already hold a type B or C EU/EFTA permit do not need any additional permit to take up a self-employed activity in Switzerland. For any other EU/EFTA citizens wishing to take up a self-employed activity in Switzerland, the following provisions apply:

- EU-27/EFTA citizens must demonstrate that the purpose of their residence in Switzerland is a self-employed activity and that they have a valid identification document to enter Switzerland.
- The same principles apply to EU-2 (Bulgaria and Romania), subject to quotas (*see Question 1, Overview*).

Croatian citizens intending to become self-employed in Switzerland must demonstrate to the competent authority that the purpose of their residence in Switzerland is a self-employed activity. They are subject to quotas. If a Croatian citizen meets that requirement and obtains a quota, he or she will receive a type L EU/EFTA or a type G EU/EFTA permit, valid for six months to establish their business. If he or she proves within the six months period that he or she is self-employed, he or she can receive a regular work permit (this applies until 31 December 2018).

Third-state nationals. As a general principle, only the following third-state nationals can establish their own business in Switzerland (if they meet the additional requirements as stated below):

- Third-state nationals holding a type C-permit (settlement permit).
- Third-state national spouse and/or children of a third-state national, who is a type C-permit holder.
- Third-state national spouse and/or children of a Swiss citizen.

To obtain the respective permit, they must:

- Submit an application to the competent cantonal authorities.
- Have access to the required financial and business-related requirements.
- Obtain one of the yearly quotas for self-employed work permits.
- Satisfy the necessary personal requirements of a qualified professional.
- Have an adequate accommodation (either bought or rented).

Demonstrate that the activity is in the general interests of the economy. The company must have a "lasting positive effect or influence on the Swiss employment market".

A lasting positive effect on the Swiss labour market is assumed if the new company or the self-employed person contributes to the industry-specific diversification of the regional economy, preserves or creates several jobs for local staff, makes substantial investments and generates new orders for the Swiss economy. Therefore, third state entrepreneurs must have a very clear business idea before they move to Switzerland. A convincing business plan will be the best foundation for a successful evaluation process.

If the application is accepted by the cantonal authorities, the third-state entrepreneur will receive at least a short-term residence permit for third-country nationals (type L permit) or a residence permit (type B permit). Both permits are subject to quotas that are set annually by the Federal Council.

Entrepreneurs

There are no special provisions applicable to entrepreneurs (*see above, Self-employment*).

Investors

There are no special provisions applicable to investors.

Business visitors

A person is considered as a business visitor in Switzerland whenever his/her stay in Switzerland is work-related (for example, business meetings, training sessions or business trips are considered as work-related activities).

Employees who work for less than eight days in Switzerland are, in principle, exempt from the work permit requirement but must have a relevant visa when qualifying as national from a country with a visa requirement.

However, when engaging in certain industries (*see above, EU/EFTA citizens: Notification procedure*), advance registration is always compulsory.

For longer stays the ordinary process (online notification procedure or work permit) as described for employees, posted employees and self-employed persons applies.

Further regulatory requirements may need to be complied with, depending on the professional activity that the business visitor intends to exercise in Switzerland.

Students

EU/EFTA citizens. Under the Free Movement of Persons Agreement, citizens of an EU-28/EFTA member state are treated like Swiss citizens. They can take up residence in Switzerland and study in Switzerland provided they live on their own means.

Third-state nationals. Third-state nationals can study in Switzerland if they meet all of the following requirements:

- The school/university confirms that the third-state national has been accepted for study at the institution.
- They have the necessary financial means.
- The third-state national meets the personal and educational requirements of the specific institution.

Other

Additionally, third-state retired persons can be admitted to live in Switzerland if they meet all of the following requirements:

- They meet the minimum age requirement, as set by the Federal Council.
- They have a special personal relationship to Switzerland.
- They have the necessary financial means.

Sponsored business-related immigration

5. What options are available for sponsored employment in your jurisdiction?

There are no differences relating to unsponsored or sponsored business-related immigration (see *Question 4).*

Requirements for sponsors

6. What are the requirements for becoming a sponsor to employ migrants? What is their role, and what are their reporting and record-keeping duties?

There are no differences relating to unsponsored or sponsored business-related immigration (*see Question 4).* There are therefore no specific reporting and record-keeping duties for sponsors.

Civil and criminal penalties for sponsors

7. What are the types of sanctions, civil and criminal penalties that sponsors may face for non-compliance with the rules and how could they impact existing sponsored migrants?

Sanctions

As Switzerland does not differentiate between unsponsored or sponsored business-related immigration, Swiss law does not provide for civil or criminal penalties for sponsors. Swiss law provides for civil and/or criminal penalties for employers not complying with the statutory provisions. They can be punished with fines or further penalties if they engage employees without a valid work permit or do not comply with the conditions of the notification procedure (*see Question 1, Enforcement*).

Impact on existing sponsored migrants

Switzerland does not differentiate between unsponsored or sponsored business-related immigration. Swiss law does not provide for civil or criminal penalties for migrants working for sponsors. However, Swiss law does provide for civil and/or criminal penalties for employees not complying with the statutory provisions. They can be punished with fines or further penalties if they are found to work without a valid work permit.

Common issues or concerns for business immigration

8. What common issues or concerns may arise under business immigration in your jurisdiction?

Usually, the priority requirement applied in the context of business immigration of third-state nationals and Croatian citizens leads to certain issues. Third-state nationals and Croatian citizens can only be admitted if a vacant position cannot be filled with a person from Switzerland or another EU/EFTA member state. Priority is given to Swiss citizens, foreign nationals with a long-term residence permit or a residence permit allowing employment, as well as all citizens from an EU-27/EFTA state based on the Agreement on the Free Movement of Persons between the EU and Switzerland. In the application process to obtain a work permit, 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 (RAV) and in the European Union's Employment Services co-operation network (EURES). Further, the employer must explain to the competent authorities why the search for a suitable candidate by means of the recruitment channels used in the specific industry (such as specialist journals, employment agencies, online job listings or corporate websites) was not successful. Suitable proof includes job advertisements in newspapers or written confirmation from head-hunters. It is recommended to create an overview of all the candidates applying for the job, including their country of origin and a short description of which qualifications for the particular position were lacking.

Obtaining a work and residence permit requires time and should be done as early as possible. The process usually takes:

- Up to three months for regular work permits.
- Up to two months in case of four-month (120-days) permits.

DEPENDANTS

9. What persons qualify as dependants (for example, family members)? What are the general requirements and restrictions for bringing dependants into your jurisdiction for sponsored and unsponsored business-related immigration?

Swiss law provides for family reunification, which aims at allowing families to live together when one of the family members moves abroad.

Persons qualifying as dependants

Different provisions apply to Swiss citizens, EU/EFTA nationals and third-state nationals (*see Question 3*).

EU/EFTA nationals. The Free Movement of Persons Agreement between the EU and Switzerland provides for a right of residence and reunification for the following family members of Swiss citizens and EU/EFTA nationals:

- Spouse or partner in a registered partnership (the Swiss equivalent of marriage for same-sex partners
- Children and grandchildren under the age of 21 or older if the applicant pays for their living expenses.
- Parents and grandparents of the applicant or his or her spouse, if their living expenses are covered by the applicant.

If the applicant is enrolled in an education and training programme, he or she can only bring his or her spouse and dependent children under the family reunification programme.

Third-state nationals. Family reunification of third-state nationals under the Foreign Nationals Act covers the following family members of type C permit holders:

- Spouse.
- Children under 18 years old.

To reunify the permit holder must prove the family relationship. Decisive criteria include having parental custody and regular contact with the child.

Third-state nationals holding a type B permit have no legal claim to a family reunification. The cantonal authorities have discretion to allow such reunification and decisions are made on a case-by-case basis.

General requirements and restrictions

The following requirements must be met for a successful family reunification:

- The applicant must provide an apartment that is large enough (according to Swiss standards) to accommodate the whole family.
- The whole family must live together (unless there are good reasons for an exemption).
- If the applicant is self-employed or not employed, he or she must further prove that he or she has adequate financial resources to cover the living expenses of the whole family.

On arrival in Switzerland, family members of the applicant must present the following documents:

- Valid identity card or passport.
- Visa (if applicable).
- Certificate issued by the authorities in the country of origin proving that the applicant is a family member.
- A letter issued by the competent authorities of the country of origin, confirming that the applicant pays for the living expenses of the family member (if this family member will be dependent on the applicant).

EU/EFTA citizens. Regardless of the nationality of the family member of an EU-27/EFTA citizen applying for a family reunification, the respective family member will receive an EU/EFTA residence permit (even if the person is a third-state national). This permit will have the same period of validity as the residence permit of the applicant. Family members can take up employment but they must register with the cantonal immigration and employment market authorities.

Generally, requirements are the same for Croatian citizens if they already have a permanent residence permit. If the dependants of a Croatian citizen have a short-term permit, they can only engage in a gainful activity if they comply with the salary, working conditions, and legal requirements for the region and the particular sector. In such cases a work permit has to be obtained prior to taking up a gainful activity.

Third-state nationals. In principle, any application for a family reunification of a third-state national must be exercised within five years. However, the application for a family reunification relating to children over 12 years old must be exercised within 12 months. These time limits for family members of third-state nationals starts to run with the grant of a permit or with the constitution of the family relationship. Any application for family reunification which will be exercised later (that is, after five years or after 12 months in case of children over 12 years old) can only be approved if the applicant has important family reasons for exercising the rights with delay.

A spouse or partner and children (between 12 and 18 years old) of a third-state national holding a type C permit will be issued with a residence type B permit with the same duration as the type C permit. Family members can work but they must register with the cantonal immigration and employment market authorities.

Entitlement to work

Family members of EU/EFTA citizens. Spouses and children of EU-27/EFTA nationals with type C, B or L permits are entitled to work in Switzerland. The same applies for spouses and children of Croatian nationals with type C or B permits. Spouses and children of Croatian nationals with L permits can only receive a work permit if the Croatian national meets the requirements for a work permit for a Croatian citizen (*see Question 4*).

Family members of third-state nationals. Spouses and children of third-state nationals with a type C or B permit are entitled to work in Switzerland.

Family members of third-state nationals with L permits can only receive a work permit if the national meets the requirements set for a work permit for a third-state citizen (*see Question 4, Third-state nationals*).

SETTLEMENT AND CITIZENSHIP

10. What is the general time frame and processes for obtaining permanent residence and citizenship in your jurisdiction for sponsored and unsponsored business-related immigration?

General process and time frame for obtaining permanent residence

Typically, citizens of Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg,

Liechtenstein, The Netherlands, Norway, Portugal, Spain, Sweden and the UK obtain a type C EU/EFTA permit after five years of legal residence in Switzerland. In principle, citizens of all the other EU/EFTA states obtain a type C EU/EFTA permit after ten years of legal residence in Switzerland.

Third-state nationals can usually only obtain a type C permit after ten years of legal residence in Switzerland. Citizens of a few third-state countries (such as the US or Canada) can obtain a type C permit after five years of legal residence in Switzerland.

General process and time frame for obtaining citizenship

Swiss citizenship is acquired by birth or adoption. In addition, it is possible to obtain citizenship in Switzerland by either a regular or a facilitated naturalisation.

Foreign individuals can be naturalised if they have lived in Switzerland for 12 years. Three years must be within the last five years before applying for Swiss citizenship. The years lived in Switzerland between the completed tenth and 20th year of age are counted twice when calculating the 12-year period. That is, a child who moved to Switzerland at the age of six years old will have reached the 12-year threshold at the age of 14 (four years from age six to age ten, and another four years (double counted) from age ten to age 14. For spouses it is sufficient, if only one of them has lived in Switzerland for 12 years and the other has had Swiss residence for five years.

An applicant must apply for citizenship at three levels: federal, cantonal and communal.

The requirements at the federal level are the same for everyone. The applicant must:

- Be culturally and socially integrated into the Swiss society.
- Be familiar with Swiss customs and traditions.
- Comply with Swiss law.
- Not be a threat to Swiss security.

The State Secretariat for Migration (SEM) will make its decision based on reports from the relevant canton and community.

If the SEM approves an application, the applicant will be granted a federal naturalisation permit, which is valid for three years. This alone does not entitle him or her to Swiss citizenship. Further, the applicant must meet the naturalisation requirements of the competent canton and the community. These requirements vary from place to place. The whole process can take up to three years to complete and during this time the applicant cannot move to another commune.

The facilitated naturalisation is the sole responsibility of the SEM. The applicant will first be given a hearing and has a right of appeal. Applicants, who want to be naturalised through facilitated naturalisation, must:

- Be integrated into their Swiss environment.
- Comply with the Swiss rule of law.
- Not be a threat Switzerland's internal or external security.

Facilitated naturalisation particularly benefits foreign spouses of Swiss nationals and children of a Swiss parent, who do not yet hold Swiss nationality.

Foreign spouses of Swiss nationals, who have lived in Switzerland for a year at the moment of the application, can apply for facilitated naturalisation after three years of marriage, if they have lived in Switzerland for a total of five years. People who have close ties with Switzerland can apply for facilitated naturalisation even if they live abroad. In such cases, however, they must have been married to a Swiss spouse for at least six years.

A revised version of the Federal Act on the Swiss Nationality will enter into force on 1 January 2018. This revision aims to ensure that only well-integrated foreigners obtain Swiss citizenship. The integration criteria will be specified and the Act will be amended to take into consideration case law on existing criminal convictions and social security dependence.

PRESENT CLIMATE AND FUTURE LEGISLATION

Present climate and trends

11. What are the recent trends, both political and social, that have impacted your jurisdiction with regard to immigration policy and law?

In 2014, the Swiss electorate voted in favour of the referendum against mass immigration, which introduced into the Swiss Federal Constitution a new article 121a, which states that Switzerland must manage immigration "in an autonomous manner".

To ensure the applicability of the Free Movement of Persons Agreement with the EU, the Swiss Parliament decided to implement article 121a of the Swiss Federal Constitution by introducing a national preference clause into the Federal Act on Foreign Nationals.

The national preference clause delegates to the Swiss Government the power to adopt different measures to encourage the employment of registered jobseekers in Switzerland in favour of immigrants to the Swiss job market. Accordingly, and effective from 1 July 2018, companies offering jobs with high unemployment rates must notify and register job vacancies.

The Federal Council also enforced a considerable reduction of the work permit quotas for non-EU nationals (third-state nationals) and for assignees from EU/EFTA countries on 1 January 2015. The non-EU/EFTA quota for short-term work permits (type L permits) and for long-term work permits (type B permits) were each reduced by 1,000.

Future legislation

12. Are there any anticipated changes in the immigration laws of your jurisdiction?

On 4 March 2016, Switzerland and the EU signed a protocol to include Croatia in the Free Movement of Persons Agreement (Protocol III), which entered into force on 1 January 2017. Croatian citizens are now covered by the Free Movement of Persons Agreement, subject to transitional provisions for ten years. The main impact of these provisions is to:

- Restrict the number of permits granted,
- Give priority to Swiss citizens and foreigners who are already admitted to the Swiss labour market priority when filling an open position
- Ensure that the salary and working conditions are monitored
- Require Croatian citizens to have a permit regardless the duration of their stay (*see Question 1, Overview* and *Question 4*).

As of 1 June 2016, Bulgaria and Romania are full members of the Free Movement of Persons Agreement. However, on 1 June 2017 the Swiss Federal Council invoked the safeguard clause in relation to category B EU/EFTA residence permits granted to Bulgarian and Romanian citizens. For one year, the permits already granted will be subject to quotas and only a limited number of permits will be granted. This applies to Bulgarian and Romanian citizens with an employment contract in Switzerland for more than a year or for an unlimited duration, and to self-employed persons.

It is unclear how the relationship between Switzerland and the EU will develop in the near future.

On 22 June 2017, the consultation on the amendment of the Federal Act on Foreign Nationals was initiated by the Swiss Federal Council. The amendment considers the developments in case law and decisions of the Swiss Federal Council in terms of foreign nationals as well as the optimisation of existing provisions. It mainly sets out procedural amendments to the existing Act. On 2 March 2018, the Federal Council adopted the Dispatch on the revision of the Federal Act on Foreign Nationals.

ONLINE RESOURCES

State Secretariat for Migration (SEM)

W *www.sem.admin.ch/sem/en/home/themen.html*

Description. Detailed overview of requirements to enter and live in Switzerland.

Cantonal Employment Services and Cantonal Migration Authorities

W *www.sem.admin.ch/sem/de/home/ueberuns/kontakt/kantonale_behoerden/adressen_kantone_und.html*

Description. Overview of all the Cantonal Employment Services and the Cantonal Migration Authorities.

Federal Department of Justice and Police FDJP (notification procedure)

W *https://meweb.admin.ch/meldeverfahren/?request_language=en*

Description. Homepage to register short term stays of business visitors using the notification procedure.

Practical Law Contributor profiles



Ueli Sommer, Partner

Walder Wyss Ltd

T +41 58 658 55 16
E ueli.sommer@walderwyss.com
W www.walderwyss.com

Professional qualifications. Lawyer, Switzerland.

Areas of practice. Employment law; immigration (recommended by Chambers and Partners)

Non-professional qualifications. LLB, Zurich University, 1995; PhD, Zurich University, 1999; LLM, University of New South Wales, Sydney, 2001.

Languages. German, English

Professional associations/memberships. Board member of the European Employment Lawyers Association; senior vice chair of the Discrimination Committee of the IBA.

Publications. Regularly publishes in legal journals and gives speeches at national and international congresses.



Philippe Nordmann, Partner

Walder Wyss Ltd

T +41 58 658 14 50
F +41 58 658 59 59
E philippe.nordmann@walderwyss.com
W www.walderwyss.com

Professional qualifications. Lawyer, Switzerland.

Areas of practice. Immigration law; employment law (recommended by Chambers Europe and Who's Who Legal).

Non-professional qualifications. LLB, University of Basel, 1995; PhD, University of Basel, 1997; LLM, Cardozo School of Law, New York, 2002.

Languages. German, English, French



Simone Wetzstein, Associate

Walder Wyss Ltd

T +41 58 658 56 54
F +41 58 658 59 59
E simone.wetzstein@walderwyss.com
W www.walderwyss.com

Professional qualifications. Lawyer, Switzerland.

Areas of practice. Employment law (special focus on gender discrimination law); immigration law

Non-professional qualifications. LLB, University of Zurich and University of Haifa, 2010

Languages. German, English, French, Hebrew