

# 3

## Residence Permits and Permanent Settlement

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The motivations to live and work in Switzerland are manifold. The high income level, economic and political stability, low tax burden, and a well-developed education system are just a few such motivations. Persons who intend to live, pursue employment in, or take their families to Switzerland, must inevitably deal with the applicable legal provisions regarding foreign nationals.

Swiss legislation and international regulations form the legal basis for controlling the entry and exit of foreigners, and define the prerequisites of their stay. Switzerland has enacted specific laws and has entered into different agreements with other countries to regulate the laws on foreign nationals.

This chapter provides a brief introduction to entry and residence requirements for foreigners in Switzerland. It also delves into the different legal aspects, the various types of residence and work permits, including their particular prerequisites, and family reunification.

### 3.1 Legal basis

Switzerland regulates the entry and residence of foreigners in two ways. In the case of EU/EFTA citizens, the Agreement on the Free Movement of Persons (AFMP)<sup>1</sup> of 21 June 1999 between the EU and its member states, and the Swiss Confederation, applies. In the case of non-EU/EFTA citizens, the Federal Act on

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<sup>1</sup> SR 0.142.112.681

Foreign Nationals (FNA)<sup>2</sup> applies, as well as another important legislative text, the Ordinance of 24 October 2007 on Admission, Period of Stay and Employment (ASEO).<sup>3</sup>

For citizens of EU member states, their family members, and certain service providers from these states, the AFMP provides comprehensive regulations for the reciprocal movement of persons between states. The FNA is therefore only applicable to EU/EFTA citizens if the AFMP and its implementing provisions do not contain any divergent provisions, or if the regulations of the FNA are more favorable for citizens and their family members.<sup>4</sup> The FNA regulates the admission of foreign nationals and aims to improve the legal status and integration of foreign nationals in Switzerland. It also protects the *ordre public*.

### 3.2 Differences between the FNA and the AFMP

The dual system (the AFMP and FNA) creates a privileged status for EU/EFTA nationals in terms of access to the Swiss labor market. To third-country nationals, however, restrictive authorization that lays down high entry hurdles applies. The AFMP and FNA differ in some aspects:<sup>5</sup>

- The AFMP grants a legal right of entry, residence, access to work as an employed person, establishment on a self-employed basis, and the right to stay in Switzerland. It does not leave the decision up to the discretion of local authorities
- The FNA on the other hand, grants the executive authorities a wide margin of discretion. The authorities may decide whether or not they issue a permit. Art 96 of the FNA regulates the exercise of discretion in that it stipulates that authorities shall take into account public interest and personal circumstances, as well as the degree of integration of foreign nationals<sup>6</sup>
- One of the fundamental principles of the AFMP is the non-discrimination against nationals who are lawfully resident in the territory of a Contracting Party<sup>7</sup>

There are also differences in legal procedures and the voidability of rulings by authorities. Citizens of EU/EFTA countries may use the ordinary courts. They may, for example, file an appeal in matters of public law at the Federal Supreme Court,

2 SR 142.20

3 SR 142.201

4 art 12 AFMP

5 Factsheet on Free Movement of Persons with the European Union, State Secretariat for Migration (SEM)

6 *Spezialisierungskurs im Arbeitsrecht* 2013/2014, Dr. iur. Felix Klaus, s 4 seq

7 art 2 AFMP and annexes I, II and III

whereas citizens of non-EU/EFTA countries do not have the option to appeal.<sup>8</sup> They do not have any other alternatives to reach the Federal Supreme Court.<sup>9</sup>

### 3.3 Types of permits

Depending on the nationality of a person, the duration of his/her stay, and whether or not he/she is working, different types of permits with different prerequisites apply.

#### Residence and work permits

##### General

There are different types of residence permits in Switzerland. Short-term permits (L-permits) are issued for a certain period of time. The period of validity of the permit is identical to the term of the employment contract. In general, L-permits are valid for 12 months. In exceptional cases, these permits can be extended once to an overall duration of no more than 24 months, provided the holder works for the same employer throughout this time. After that, a long-term work permit is required.

The residence permit (B-permit) is issued for an initial period of one year, and may be renewed. An application for renewal must be filed by the permit holder. The conditions for granting the permit must, in general, be checked each year by the competent authority. In practice, the renewal of B-permits is a formality, unless there are reasons against a renewal, such as criminal offences, dependence on social security, or major changes in the labor market. There is, however, no statutory right to the renewal of the permit.

Foreign nationals who have stayed in Switzerland for a certain period of time may apply for an unlimited residence permit (C-permit). The required period of stay is generally 10 years. Depending on the nationality of foreigners, a different minimum period may apply.<sup>10</sup>

##### EU/EFTA citizens

Citizens of the EU/EFTA have a legal entitlement to a work- and residence permit if an employment contract with a company in Switzerland has been issued. There are no restrictions on granting permits. Depending on the (expected) duration of the contract, different permits apply.

<sup>8</sup> art 83 let C Federal Act of 17 June 2005 on the Federal Supreme Court, SR 173.110

<sup>9</sup> *Spezialisierungskurs im Arbeitsrecht* 2013/2014, Dr. iur. Felix Klaus, s 8 seq

<sup>10</sup> Factsheet on Residing in Switzerland and taking up gainful activity, State Secretariat for Migration (SEM)

Nationals of EU/EFTA member states do not need a work permit if they work for less than 90 days per calendar year for a company in Switzerland. However, registration is required if employment is for more than eight days per calendar year. This registration can be done online. It is important to note that the registration needs to be filed at least eight days before employment commences in Switzerland. Usually, the following documents and information have to be submitted:

- Copy of passport
- Name and address of the employer in Switzerland
- Job title and project in Switzerland
- Employment start and end dates
- Work days

If the gainful activities continue for longer than 90 days per calendar year, a specific work permit is required.

EU/EFTA citizens may claim one of the following work and residence permits for a gainful activity that exceeds three months:

- A short-term residence and work permit, issued for employment between three months and 364 days (L-permit)
- A residence and work permit for employment of more than 12 months (B-permit)
- The unlimited residence permit (C-permit), issued to EU-17/EFTA citizens after five years' regular and uninterrupted residence in Switzerland, pursuant to settlement treaties or reciprocal agreements (except of Cyprus and Malta, as the AFMP does not contain any provisions relating to these countries). The required period of stay for a C-permit is five or 10 years.<sup>11</sup> There is no legal right to an unlimited residence permit (C-permit)<sup>12</sup>

EU/EFTA citizens who want to work on a self-employed basis have to submit an application together with a business plan, proof of financial means, and a certificate of registration. Such a permit has to be obtained from the labor market authorities of the canton in which the work will be provided. Furthermore, Swiss authorities are allowed to request this proof at any time, even after the permit has been issued, if there are serious doubts regarding the financial situation of the self-employed foreigner.

<sup>11</sup> art 34 FNA

<sup>12</sup> 'Residence permits for EU/EFTA nationals' (*State Secretariat for Migration — SEM*) [sem.admin.ch/sem/en/home/themen/aufenthalt/eu\\_efta.html](http://sem.admin.ch/sem/en/home/themen/aufenthalt/eu_efta.html) accessed 28 July 2017

## Non-EU/EFTA citizens

Work permits for citizens of non-EU/EFTA countries are subject to a nation-wide quota. The annual quota is set by the Swiss Confederation and cantons, that take into account the macroeconomic interests and the current labor market. The issuance of work permits also depends on whether the conditions of work and salary are equal to Swiss standards. Additional payments can be required to match Swiss standards. This provision protects domestic employees from wage dumping and abusive working conditions. In addition, employees from non-EU/EFTA countries are only permitted to the Swiss labor market if no appropriate candidate can be found throughout Switzerland and other EU/EFTA countries. The foreign employee must be considered to be especially qualified for the position in question. The authorities will require proof that an employer made an effort to recruit in Switzerland and EU/EFTA countries, and that no qualified Swiss citizen, foreign national with a Swiss residence permit, or EU/EFTA citizen could be found. Candidates are also required to fulfill personal requirements according to the FNA.<sup>13</sup>

Depending on the purpose of the stay, different types of permits apply. The short-term residence permit (L-permit) will allow the stay and gainful activity within Switzerland for 12 months. Due to the priority of Swiss citizens and nationals of EU/EFTA states in the labor market and the quota requirement, it is difficult to obtain such a permit. The Residence permit (B-permit) is for persons who are expected to stay and work in Switzerland for more than 12 months. Since the quota for B-permits is smaller than for L-permits, obtaining a B-permit is even more difficult. In matters of the unlimited residence permit (C-permit), the same rules apply as for EU/EFTA citizens.<sup>14</sup>

A non-EU/EFTA citizen who intends to be self-employed must submit an application together with a business plan, proof of financial means, and a certificate of registration. The competent authority will review the business plan and assess the relevant market situation.

## Residence permit without employment

Every EU/EFTA citizen who is not gainfully employed has the right to stay in Switzerland (with his/her family) if he/she has sufficient financial resources to make a living. This is the case if he/she is not in need of social welfare. Pensioners are only required to prove that the available financial resources exceed the amount that would

<sup>13</sup> art 23 and 24 FNA

<sup>14</sup> art 23 f FNA; 'Residence permits for EU/EFTA nationals', (*State Secretariat for Migration — SEM*), *sem.admin.ch/sem/en/home/themen/aufenthalt/nicht\_eu\_efta.html* accessed 28 July 2017

qualify them to obtain supplementary benefits (according to the AHVG). In addition, all of the applicants must take out health- and accident-insurance, covering all risks.<sup>15</sup>

Citizens of non-EU/EFTA countries do not require a permit for any period of stay without gainful employment of up to three months; if the visa indicates a shorter period of stay this period applies.<sup>16</sup> A permit is required for foreign nationals intending to stay for longer than three months without entering into employment.<sup>17</sup> Pensioners of non-EU/EFTA countries may be admitted if they have reached a minimum age of 55 years, have special personal relations to Switzerland, and have the required financial means.<sup>18</sup> In order to prove a special personal relationship with Switzerland, an applicant would need to show, for example, previous longer stays in Switzerland (such as holidays, education, or employment), intensive business and personal connections to Switzerland, or the presence of close relatives (for example, parents or children). The FNA stipulates the necessary financial resources.<sup>19</sup> Applicants must have sufficient resources (pensions, assets) to take care of themselves and their families so that the risk of welfare dependency is assessed to be negligibly small.<sup>20</sup>

### 3.4 Cross-border services

EU/EFTA citizens who intend to provide services in Switzerland may enter and stay in Switzerland for a maximum of 90 effective working days per calendar year without any permit. This applies to self-employed occupation for a limited time without settlement in Switzerland, as well as to employees of firms based in the EU who are sent to Switzerland to provide a service. If a special bilateral agreement is applicable to the provided service the person may stay in Switzerland for as long as the service is being carried out.<sup>21</sup> The AFMP does not include full freedom to provide cross-border services, as is possible within the EU. The provision of financial services in Switzerland (where a license and supervision are required) and the provision of services regarding job placement and staff leasing services (by legal entities based in an EU/EFTA member state) have not been liberalized.<sup>22</sup>

15 Factsheet on Residing in Switzerland without gainful activity, State Secretariat for Migration (SEM)

16 art 10 para 1 FNA

17 art 10 para 2 FNA

18 art 28 FNA

19 art 28 para 1 let c FNA

20 *Weisungen und Erläuterungen Ausländerbereich (Weisungen AuG)*, p 199 seq, 2013, State Secretariat for Migration (SEM)

21 art 5 para 1 AFMP

22 Factsheet on Cross-border service provision (EU/EFTA), State Secretariat for Migration (SEM); *Weisungen VEP, Weisungen und Erläuterungen zur Verordnung über die Einführung des freien Personenverkehrs*, p 86 seq, 2017, State Secretariat for Migration (SEM)

Service providers are required to register their services of more than eight days per calendar year online. The registration must take place eight days in advance. However, service providers in so-called risk industries (building sector, hotel and restaurant industry, security services, etc.) must register from the first day onwards. Switzerland regulates service providers with the *Entsendegesetz* and the relevant regulations.<sup>23</sup>

Non-EU/EFTA citizens who provide cross-border services or who are employed in Switzerland on behalf of a foreign employer require a permit if the activity lasts longer than eight days within a calendar year.<sup>24</sup> Service providers of certain industries require a permit, irrespective of the duration of their activity.<sup>25</sup> Non-EU/EFTA citizens who are granted a permit to work or to provide services in Switzerland for up to four months during one calendar year do not need to register.<sup>26</sup>

### Cross-border commuters

The cross-border permit (G-permit) is for cross-border commuters who are nationals of EU/EFTA member states, reside in an EU/EFTA member state, and work in Switzerland. They are granted occupational and geographical mobility within Switzerland, irrespective of whether or not they are working in an employed or self-employed capacity. Cross-border commuters must return to their main place of residence outside of Switzerland at least once a week. Transitional conditions (border zones and restrictions concerning the Swiss labor market) apply to Croatian cross-border commuters.<sup>27</sup>

Non-EU/EFTA cross-border commuters are people with a permanent right of residence in a neighbouring state, who have resided in the neighbouring border zone for at least six months, and work within Switzerland.<sup>28</sup> Cross-border commuters must return to their main place of residence outside of Switzerland at least once a week.<sup>29</sup> If cross-border commuters want to change jobs or occupations, they need permission. Furthermore, the labor market requirement (especially regarding precedence given to the domestic workforce)<sup>30</sup> must be fulfilled.<sup>31</sup>

23 SR 823.20 and SR 823.201

24 art 14 para 1 ASEO

25 art 14 para 3 ASEO

26 art 12 para 1 ASEO; *Weisungen und Erläuterungen Ausländerbereich (Weisungen AuG)*, p 174 seq, 2013, State Secretariat for Migration (SEM)

27 Factsheet on Cross-border commuters, State Secretariat for Migration (SEM)

28 art 25 para 1 FNA

29 art 35 para 2 FNA

30 art 21 FNA

31 art 17 of the AFMP appendix I; 'Cross-border commuters (G-permit)', *Office for Economy and Labour*, [awa.zh.ch/internet/volkswirtschaftsdirektion/awa/en/arbeitsbewilligungen/drittstaaten/grenzgaenger.html#subtitle-content-internet-volkswirtschaftsdirektion-awa-en-arbeitsbewilligungen-drittstaaten-grenzgaenger-jcr-content-contentPar-textimage\\_0](http://awa.zh.ch/internet/volkswirtschaftsdirektion/awa/en/arbeitsbewilligungen/drittstaaten/grenzgaenger.html#subtitle-content-internet-volkswirtschaftsdirektion-awa-en-arbeitsbewilligungen-drittstaaten-grenzgaenger-jcr-content-contentPar-textimage_0) accessed 28 July 2017

### 3.5 Family reunification (*Familiennachzug*)

The purpose of family reunification is to enable families to live together legally and securely. Before granting family reunification it must therefore be clarified where the actual center of family life is. If it remains abroad, the conditions of family reunification are not met.<sup>32</sup>

#### EU/EFTA nationals

Citizens of EU/EFTA countries who have been granted the right to stay in Switzerland may extend this right to certain family members.<sup>33</sup> They may bring their spouse and their own children or their spouse's children, who are under the age of 21 or receive support. They may also bring their own parents or their spouse's parents, if they receive support. The nationality of these family members is irrelevant. The right of these family members to stay in Switzerland only persists for as long as the right of the original applicant exists.<sup>34</sup> The family members also have the right to access the labor market without restrictions.<sup>35</sup>

Persons wanting to bring their family members to Switzerland must provide proof of adequate accommodation for their family members. This means that the accommodation must reflect typical living conditions of Swiss citizens.

In the case of divorce, family members generally lose the right to stay in Switzerland. This signifies that they have to establish their right to stay by other means, for example, by applying for a residence permit in their own capacity. In the case of non-EU/EFTA citizens, the FNA applies.

In the case of death of the original applicant, family members who were living with this person at the time of his/her death may stay in Switzerland if one of the following conditions are met:

- The person was economically active and held a Swiss residence permit for EU/EFTA citizens for at least two years before he/she died
- The cause of death was either work related or caused by an illness
- The spouse holds Swiss citizenship or lost this citizenship through marriage<sup>36</sup>

There are transitional conditions that apply to Croatian nationals.<sup>37</sup>

32 *Weisungen und Erläuterungen Ausländerbereich (Weisungen AuG)*, p 237, 2013, State Secretariat for Migration (SEM)

33 art 3 para 1 AFMP appendix I

34 art 3 para 4 AFMP appendix I

35 art 3 para 4 AFMP appendix I; Factsheet on Family Reunification, State Secretariat for Migration (SEM)

36 Factsheet on Family Reunification, State Secretariat for Migration (SEM)

37 Factsheet on Croatia: Entry and stays, State Secretariat for Migration (SEM)



### Third-country nationals

Family reunification for third-country nationals living in Switzerland (with a C- or a B-permit) is more restricted. Third-country nationals may only bring their spouse and their children (under 18 years of age) with them,<sup>38</sup> and only if they live with the permit holder. The permit holder must have suitable accommodation for all family members (some cantons use the following rule: number of persons minus one equals the minimum number of rooms of accommodation required). Family reunification must be claimed within a certain period of time, generally five years,<sup>39</sup> to support rapid integration. A belated family reunification is only granted if important family reasons are invoked.

The right of a permit holder's spouse and children to be granted residence permits, and to have their residence permits extended, subsists after the dissolution of the marriage or of the family household if (i) the marriage lasted a minimum of three years and integration has been successful; or (ii) important personal reasons make an extended residence in Switzerland necessary (*Härtefall*).<sup>40</sup>

The spouse and children of a Swiss national, or of a person with a residence permit, may work on a salaried or self-employed basis anywhere in Switzerland.<sup>41</sup>

All provisions regarding family reunifications on foreign spouses also apply *mutatis mutandis* to registered partnerships of same-sex couples, in accordance with the Federal Act of 18 June 2004 on the Registered Partnership between Persons of the Same Sex.<sup>42</sup> Many same-sex couples abstain from registering their partnerships, in some cases due to possible disadvantages in their home countries. In such cases, a residence permit may still be granted.<sup>43</sup> The same rule may be applicable regarding cohabitants of Swiss citizens.<sup>44</sup>

### Swiss citizens

In the case of foreign family members of Swiss nationals, a distinction applies between those who are already in possession of a permanent residence permit in an EU/EFTA member state, and those who are not.<sup>45</sup>

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38 art 43 and 44 FNA

39 art 47 FNA; art 73 ASEO

40 art 50 FNA

41 art 42–44 and art 46 FNA

42 SR 211.231

43 art 31 ASEO; art 30 para 1 let B FNA

44 Weisungen und Erläuterungen Ausländerbereich (Weisungen AuG), p 237 seq, 2013, State Secretariat for Migration (SEM)

45 art 42 para 2 FNA

If the family members of a Swiss national are not in possession of permanent residence permits, the spouse and unmarried children under 18 are entitled to be granted a residence permit.<sup>46</sup> Children under 12 are entitled to be granted a permanent residence permit.<sup>47</sup> The right of family reunification is only granted if the requirement of living together is met.

If the family members are already in possession of permanent residence permits in an EU/EFTA member state, they are entitled to be granted residence permits in Switzerland. Swiss citizens may bring their spouse and relatives in descending line who are under the age of 21 or who receive support and relatives of either spouse in ascending line who receive support.<sup>48</sup> Children under 12 are entitled to be granted a permanent residence permit with no time limit.<sup>49</sup>

The AFMP is only applicable under cross-border circumstances, as in the case of Swiss citizens who are returning from an EU/EFTA member state with their family members. According to the new practice of the Federal Supreme Court, the right of family reunification<sup>50</sup> is no longer limited to family members who hold residence permits in EU/EFTA member states. The Federal Court thus adopted the new jurisprudence of the European Court of Justice.<sup>51</sup>

However, the FNA still requires the family members who are not nationals of EU/EFTA countries, to have residence permits in EU/EFTA member states. This condition has not been changed.<sup>52</sup>

### 3.6 Swiss Citizenship Act

In addition to residence permits, work permits, and permanent settlement, the Swiss Citizenship Act is important for foreign nationals, as it stipulates the prerequisites for naturalization in Switzerland. The Federal Council has decided to bring a revised Swiss Citizenship Act and the respective regulations into force on 1 January 2018. The new law is set to unify and harmonize naturalization practices across the cantons. The most important innovation of the Act is that a foreign national may now file an application for naturalization after 10 years' residence in

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46 art 42 para 1 FNA

47 art 42 para 4 FNA; art 47 FNA

48 art 42 para 2 FNA

49 art 47 FNA

50 art 3 AFMP appendix I

51 *Metock and others v Minister for Justice, Equality and Law Reform*, ECJ [25 July 2008] (C-127/08)

52 art 42 para 2 FNA; *Weisungen und Erläuterungen Ausländerbereich (Weisungen AuG)* p 240 et seq, 2013, State Secretariat for Migration (SEM)

Switzerland. This is a change from the previous minimum residence qualification of 12 years. In addition, naturalization is now only possible for foreigners who are in possession of an unlimited residence permit (C-permit). Various other aspects of the naturalization criteria have also been tightened. In a number of specific areas, the cantons are still able to make further demands as part of the naturalization process. The new law will only be applicable to applications for naturalization filed after 1 January 2018. For applications filed before this date, the existing law is still applicable.<sup>53</sup>

This chapter looked at the different types of residence permits and work permits available to foreigners and their families looking to settle down in Switzerland. A thorough understanding of the applicable rules and regulations is vital for a legal and successful relocation process.

#### Links to useful online resources

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- [admin.ch/gov/en/start/federal-law/search.html](http://admin.ch/gov/en/start/federal-law/search.html)  
Provides the legislative texts referred to in this chapter
- [sem.admin.ch/sem/en/home.html](http://sem.admin.ch/sem/en/home.html)  
The State Secretariat for Migration (SEM) provides legislative texts and publishes instructions of the federal authorities that can support the understanding of legal provisions

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<sup>53</sup> Briefing Bär&Karrer, Total Revision of the Swiss Citizenship Act — Naturalization is only possible with a C-residence Permit, July 2017

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