

BRIEFING MARCH 2022

UKRAINE WAR: PROTECTION STATUS S

Protection seekers from Ukraine who have had to leave their home country because of the war will be granted the so-called „Protection Status S“ in Switzerland. This was decided by the Federal Council on 11 March 2022. This means that refugees from the Ukraine will receive a residence permit without having to go through the regular asylum procedure.

Under normal circumstances, (i), Ukrainian nationals can legally enter Switzerland without a visa and can stay freely in Switzerland (and the Schengen Area) for a maximum of only 90 days. For any residence permits, (ii), Ukrainian citizens as non-EU/EFTA-nationals need to have a qualifying employment in Switzerland and must undergo a thorough approval process. When entering Switzerland as refugees and asylum seekers, (iii), they would normally have to go through an asylum procedure that can take several months and up to one year. In this asylum approval procedure, the authorities examine whether the reasons for asylum are credible and - if so - whether the requirements for refugee status under the Federal Asylum Act (AsylA, SR 142.31) are met. During the first three months of this procedure, applicants are generally not permitted to work and are typically subject to onerous travel restrictions. **Regarding current Ukrainian refugees, however, Switzerland has decided to apply for the first time a procedure that is able to provide assistance to the refugees in an unbureaucratic manner.**

For this reason, the Federal Council has activated for the first time since its legal implementation in 1998 the so called „Protection Status S“. While this new procedure has applied since 12 March 2022, most of the detailed questions are still to be resolved on a case-by-case basis. The legal basics, however, are as follows:

PROTECTION STATUS S

With the Protection Status S, protection is granted solely based on belonging to a certain defined group of persons in need of protection (see below section 2). Belonging to the defined group is determined in a simplified procedure,

in which certain procedural steps of the regular asylum procedure are applied (e.g., registration of the application, security check, short interview and examination of the affiliation to the group of persons in need of protection).

If the Federal Council has not **revoked temporary protection after five years**, those in need of protection receive a **temporary residence permit** (residence permit B) from the canton where they live (art. 74 AsyIA).

In the case of persons whose refugee status is revoked based on an individual risk of persecution when a reason listed in the Refugee Convention obviously applies, the ordinary asylum procedure is carried out.

DEFINITION OF THE GROUP OF PERSONS IN NEED OF PROTECTION

Protection Status S applies to the following categories of persons:

- a. Protection-seeking Ukrainian nationals and their family members (partners, minor children, and other fully or partially supported close relatives) who were residing in Ukraine before 24 February 2022;
- b. Protection-seeking persons of other nationalities and stateless persons and their family members as defined in subparagraph (a) who had international or national protection status in Ukraine before 24 February 2022;
- c. Protection-seeking persons of other nationalities and stateless persons and their family members as defined in subparagraph (a) who can prove with a valid short-term residence or residence permit that they have a valid right of residence in Ukraine and cannot return to their home countries safely and permanently.

Switzerland bases its definition of these groups of persons in need of protection on the provisions of the European Union (EU).

LEGAL BACKGROUND OF THE PROTECTION STATUS S

The instrument of temporary Protection Status S was created in the context of the Balkan Wars, when Switzerland was confronted with an influx of persons seeking protection. Since the total revision of the Federal Asylum Act in 1998, the protection system has been regulated by law.

CONTENTS OF THE PROTECTION STATUS S

- > With the Protection Status S, the persons concerned receive a residence permit S (art. 45 Asylum Ordinance No. 1 (AO 1), SR 142.311). This permit is limited to a maximum of one year but can be extended. After a minimum of five years, persons in need of protection receive a residence permit B, which is limited in time until the temporary protection is lifted (art. 74 AsyIA).
- > Those persons who are granted Protection Status S may travel abroad and return to Switzerland without an extra permit or visa (art. 9 para. 8 Regulation on the Issuance of Travel Documents for Foreign Persons (RDV), SR 143.5). According to the decision of the Federal Council, persons in need of protection as defined above do not need a return visa, as they can travel freely (cf. art. 9 para. 8 RDV).
- > However, The Confederation and the cantons can examine the need for **language lessons** in order to promote linguistic integration. The cantons are also free to provide for further integration services.
- > The Federal Government facilitates **social and professional integration** by allowing **children to attend school immediately** and **adults to take up gainful employment** without a waiting period (art. 53 para. 1 Ordinance on Admission, Residence and Gainful Employment (OASA), SR 142.201). The permit for temporary employment can be issued from the time of the granting of the Protection Status S without any waiting period. The requirements for admission to gainful employment are governed by the Federal Act on Foreign Nationals and Integration (FNIA), SR 142.20).
- > In addition, **persons in need of protection will now also be granted the right of temporary self-employment** if the requirements of art. 19 letters b and c FNIA are met (art. 53 para. 2 OASA). This permit can also be issued without a waiting period from the date of granting of the Protection Status S. The admission requirements for self-employed persons with S status are also adjusted. For example, an examination of the overall economic interest pursuant to art. 19 FNIA is waived. Likewise, the annual quotas for work permits are not applied. On the other hand, the necessary financial and operational conditions and an adequate and independent source of income are to be considered by the cantons to assess whether the self-employed persons will be likely to have a successful future as entrepreneurs.
- > The goal is to create framework conditions that allow for the quick commencement of gainful employment which



thereby contributes to the financial independence of the persons concerned. At the same time, it is important to ensure that these employees are protected from exploitation.

- > The permit is issued by the cantons at the legal seat of the employer and the **application must be submitted by such employer**. According to art. 30 para. 1 letter 1 FNIA, **the usual admission requirements can be waived** (art. 18-29 FNIA). This allows an even more generous regulation under Swiss law than the minimum requirements of the respective EU-Directive. As a minimal protection of the employees with a permit S against abuse and social dumping, the wage and working conditions of such employees are examined (art. 53 para. 1 OASA).

As mentioned above, if the Federal Council has not lifted the temporary Protection Status S after five years, the persons in need of protection will receive a residence permit B which is limited in time until the temporary Protection Status S is lifted (art. 74 para. 2 AsyIA). For persons in need of protection with a residence permit B (i.e., five years or more of residence) a global lump sum is paid, half of which is borne by the Federal Government (art. 26 A0 2) as well as an additional lump sum to help with integration.

The Protection Status S is a „return-oriented“ status. Art. 67 para. 2 AsyIA provides that the Federal Authorities shall take measures in cooperation with the home country, countries of origin, other host countries or international organisations to create the conditions for the eventual safe return of persons seeking protection.

IMPLEMENTATION OF PROTECTION STATUS S

For persons in need of protection, the cantons will receive from the Federal Government a global lump sum **for the duration of the temporary grant** of protection until it expires or is lifted (but for no longer than five years after the granting of protection with the receipt of a residence permit) (art. 20 Asylum Ordinance No. 2 on Financial Matters (A0 2)). With this lump sum, the cantons receive reimbursement for accommodation, compulsory health insurance and other costs.

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