

Requirements for the award of a residence permit in Switzerland from the perspective of third-country nationals

1. Facts and Legal Issues

Switzerland has developed into a country of immigration over the last decade. The reason for this - apart from the high quality of life - is the attractive range of jobs and working conditions. However, immigration from abroad to Switzerland requires the fulfilment of various conditions. In order to be able to remain legally in Switzerland, a residence permit is required. Thanks to the Agreement on the Free Movement of Persons between Switzerland and the European Union, EU/EFTA nationals enjoy certain advantages that make it much easier to move to Switzerland and obtain a residence permit. Third-country nationals are not entitled to these benefits.

In this memorandum the following questions will be addressed:

- What types of residence permits does Switzerland have?
- What are the requirements for a third-country national to get a residence permit?
- What is the duration of the residence permit?

2. Legal

Types of Residence Permits for Third-country Nationals in Switzerland

For third-country nationals, Switzerland has the following residence permits:

➤ **Permit B for Third-Country Nationals (residence permit)**

The B permit for third-country nationals is issued very restrictively. There is no entitlement to a permit, but it is at the discretion of the authorities. If the requirements are met, the official may not arbitrarily refuse to issue the permit. Within the framework of the admission requirements and under further conditions, the following persons may receive a B permit:

1. Salaried Employees::

- An employment contract of more than one year must be presented;
- The gainful employment to be entered into must be in the interest of the economy as a whole;
- There must be a request from an employer;
- The maximum numbers (so-called quotas) for the first issuance of a short-term or annual residence permit must not yet be exhausted;
- There are no suitable employees from Switzerland or an EU or EFTA member state available for this specific activity;
- The job notification obligation was fulfilled;
- The wage and working conditions customary in the location, profession and industry are complied with;
- The gainfully employed persons are managers, specialists or other qualified workers whose professional qualifications, professional and social adaptability, language skills and age allow them to expect sustainable integration into the Swiss labour market and social environment. There are exceptions to this rule for investors and entrepreneurs who maintain or create jobs, recognised persons from the fields of science, culture and sport, persons in the context of a management transfer from internationally active companies, etc. (Art. 23 para. 3 FIL);
- The employed person must have appropriate housing.

2. Self-Employed People:

- The financial and operational requirements must be met;
- The activity must be in the general economic interest;
- The necessary financial and operational requirements must be fulfilled;
- A sufficient, independent livelihood exists;
- The persons must be executives, specialists and other qualified workers whose professional qualifications, professional and social adaptability, language skills and age allow them to expect sustainable integration into the Swiss labour market and social environment. There are exceptions to this rule for investors and entrepreneurs who maintain or create jobs, recognised persons from the fields of science, culture and sport, persons in the context of a management transfer from internationally active companies, etc. (Art. 23 para. 3 FIL)
- The person must have appropriate housing.

3. Pupils and students for the purpose of education and further training:

- Confirmation of admission from the school management, according to which the training or further training can be taken up;
- appropriate housing must be guaranteed;
- The necessary financial resources are available;
- The applicant fulfils the personal and educational requirements for the intended education or training, and
- In the case of minors, supervision must be ensured.

4. Pensioners for the purpose of permanent residence:

- They must have reached at least 55 years of age;
- Apart from managing their own assets, they no longer have to engage in gainful employment;
- There must be a special personal relationship with Switzerland; and
- The necessary financial resources must be available.

5. Patients for temporary medical treatment:
 - The financing of the treatment as well as the stay and the re-entry to original country must be secured.
6. persons who may invoke an exceptional case pursuant to Art. 30 FIL.
7. Family members of Swiss nationals and third-country nationals who are entitled to reside in Switzerland:
 - Foreign spouses of Swiss nationals and unmarried (foreign) children under the age of 18 are entitled to join them;
 - The family members joining the family must live together with the Swiss family after arrival in Switzerland.

For third-country nationals, the period of validity of the B permit is one year. By law, this can be extended for another two years, but in practice it is renewed for another year. In order to be eligible for an extension, the person must continue to fulfil the following conditions.

➤ **Permit C for Third-Country Nationals (Settlement Permit)**

The C permit or settlement permit grants a foreigner permanent and fixed presence in Switzerland. In contrast to the residence permit, it is not subject to conditions and is unlimited in time. Holders of a C permit are quasi-natives, but do not have the right to vote and do not have a Swiss passport. Once a settlement permit has been granted, its loss and expulsion from Switzerland is subject to qualified conditions (e.g. in the case of serious delinquency or considerable and long-term welfare dependency). It should be noted that a downgrade to another type of permit is possible due to new integration problems that have arisen. The main prerequisite for the granting of a settlement permit is previous residence in Switzerland. To this rule there are various exceptions:

1. Immediate Granting: Foreign children of permanent residents and Swiss nationals who were born in Switzerland or joined their parents before the age of 12 are granted a C permit without prior residence in Switzerland. This is a legal entitlement. Furthermore, foreign professors who teach at a Swiss university or university of applied sciences and take up residence here also benefit from this advantage. They and their family members receive the C permit immediately, even without prior residence in Switzerland.
2. Early Granting: Foreign spouses of Swiss nationals and/or permanent residents receive the settlement permit after a proper and uninterrupted stay in Switzerland of five years. This is also a legal entitlement. It should be noted that in order for the entitlement to be fulfilled, the family community must be intact, i.e. the spouses must live together. In addition, the foreign spouses must fulfil the following criteria (Art. 58a FIL):
 - Language skills of the language spoken at the place of residence (reference level A2 oral or A1 written);
 - No significant delinquency
 - Willingness to participate in economic life or to acquire education.

Persons who are particularly well integrated in terms of language also benefit from early issuance after a proper and uninterrupted stay of five years. The prerequisite is a language level of

B1 orally and A1 in writing. The regular integration criteria (observance of public security and order as well as the will to participate in economic life or to acquire education) must also be fulfilled.

Foreign nationals who have concluded a treaty with Switzerland can also obtain a permanent residence permit after an orderly and uninterrupted stay of five years in Switzerland. Examples of such foreign nationals are citizens of the USA, Canada, Andorra, Monaco, San Marino and the Vatican City. The ordinary integration criteria must also be fulfilled

3. Ordinary Issuance: Persons who have resided in Switzerland for ten years in an ordinary manner may apply for a settlement permit. Presence as an asylum seeker or provisionally admitted person does not count as regular residence. There is no legal entitlement to the regular granting of a settlement permit; it is a discretionary decision. As with all other types of issuance, the Migration Office checks the other integration criteria (see above). For example, social welfare dependency or delinquency can lead to the refusal of a settlement permit.

➤ **Permit L for Third-Country national (Short-Term Residence Permit)**

The L permit is intended for short stays (up to one year) in Switzerland that require a permit. The short-term residence permit is limited in time and linked to a specific purpose. A short-term stay for gainful employment (e.g. employment for less than a year, an internship, an au pair stay, etc.) as well as a short stay without gainful employment (e.g. medical treatment or further education) are considered as a purpose. A short-term residence permit may also be issued in Switzerland for the purpose of preparing for marriage (this is of great importance in practice). It should be noted that short-term residence permits for third-country nationals are contingent (Art. 20 AIG). This regulation does not apply to artists who do not work in Switzerland for more than eight months in total within one year.

Short-term residence permits are issued for a maximum period of two years. After this period, the foreigner must leave Switzerland for at least one year. Before this period, the issuance of a new, similar short-term residence permit is generally out of the question. In addition, the issuance of a series of unequal short-term residence permits is prohibited.

➤ **Permit G for Third-Country Nationals (Cross-Border Commuter Permit)**

For third-country nationals, a cross-border commuter permit for self-employed or employed gainful employment is possible if a person resides in the border zone of an EU country bordering Switzerland and does not have EU citizenship. A prerequisite for the granting of a permit is that the person returns to his or her place of residence at least once a week.

As a rule, the G permit is valid for one year and is extended for a further year at a time (on a discretionary basis). After five years of uninterrupted extension, there is a legal entitlement to further extension.

➤ **S permit (For People in Need of Protection)**

According to Art. 4 of the Asylum Act, Switzerland may grant temporary protection to persons in need of protection as long as they are exposed to a serious general danger, in particular during a

war or civil war as well as in situations of general violence. To be able to get this permit, a certain group of people has to be appointed by the federal council as “people in need of protection”. The S permit grants admission to a limited group of people, without having to check if the requirements for them to be qualified as refugee apply.

The S permit is not a residence permit per se. It entitles its holders to stay in Switzerland provisionally, but not to cross the border and return to Switzerland. The duration of its validity does not entail any right of residency..

Excursus: Due to the recent events concerning the war in Ukraine, the federal council decided on March 11th 2022 to grant this permit to people coming from Ukraine and seeking protection. Thanks to this decision, the protection seekers will receive the mentioned permit without having to undergo a formal asylum-seeking procedure. The permit is limited in time and granted for the time of the duration of the danger. People who have been granted a S permit have the right to bring direct family members to join them. Not only Ukrainian citizens have the right to receive the S permit; Ukrainian residents (not nationals) and their families who were obliged to leave the country because of the war, are also entitled to receive a S permit. Additionally they must be in possession of a valid residence permit for the Ukraine and not have the possibility to return to their homeland safely or at all. Seekers who have already received a protection status in another EU country, are not entitled to be granted a S permit. The federal council has also decided that people in possession of a S permit will be allowed to pursue an employed activity or to work independently.

➤ **N permit (Permit for Asylum-Seekers)**

According to Art. 3 of the Asylum Act anyone can apply for asylum on entry at a border crossing, border control at a Swiss airport or directly at one of the six federal asylum centres with processing facilities. To be granted asylum the seeking person must have refugee status. The applications are examined individually and carefully according to the actual circumstances in each case by the State Secretariat for Migration (SEM).

To have refugee status, the asylum seeker must have the following characteristics:

- The persecution of the fugitives must be actual
- The persecution must be serious
- The persecution must be selective
- The subject of the persecution must be relevant
- No protection is granted in the home country

➤ **Swiss Citizenship**

Switzerland recognises the acquisition of Swiss citizenship firstly through paternal or maternal descent (ius sanguinis), regardless the place of birth. Besides that, there is the possibility of becoming a Swiss citizen by means of naturalisation. The ordinary naturalisation is the option for foreigners who lived in Switzerland for a minimum of 10 years and are in possession of a C Permit. Depending on the canton the person lives and makes the request, the requirements on the time of residence may vary. The canton of Zurich requires the person to have lived constantly in the same municipality for at least two years. Besides that the person must be successfully integrated, familiar with the Swiss living conditions and not threat to internal or external security. For persons married to a Swiss citizen or for persons who have been born in Switzerland and belong to the third generation of a family of foreign citizens living in Switzerland, a simplified naturalisation can apply. There is also the

possibility to be granted the Swiss Citizenship in a simplified way if the person applying is descendant of Swiss citizens (parents / grandparents).

© REBER April 2022

Contact:

Roberto Hayer roberto.hayer@reberlaw.ch

Maria Pia Tribelhorn mariapia.tribelhorn@reberlaw.ch

REBER Rechtsanwälte/Attorneys at Law

Asylstrasse 64

8032 Zürich (Switzerland)

T: + 41 44 245 44 44

F: + 41 44 245 44 45

www.reberlaw.ch