

# THE LAW ON FOREIGN PERSONS: SELECTED ISSUES

The law on foreign persons is a particularly complex area. This is mainly due to the fact that the rules in this area come from various sources such as agreements, laws, guidelines and the practice of the authorities which may vary from canton to canton. In view of these difficulties, we considered it sensible to focus on specific issues in this area. We will therefore proceed by way of answers to questions that might be raised by a person coming to work in Switzerland or a Swiss company wanting to hire a foreign employee or conduct an intra-group transfer.

For better understanding of what follows, we will first give some definitions:

**Provision of services in Switzerland:** there is a provision of services in Switzerland when an employee remains under contract with its employer abroad but comes to work for a Swiss company, for a fixed period. The determining criteria to know if there is provision of services is whether the employee has an employment contract with the Swiss company or not.

**Third State national:** national from a state which is not member of the European Union (EU) or the European Free Trade Agreement (EFTA).

**EU-17:** the 15 states that were members of the EU and the EFTA upon entry into force of the Agreement on the Free Movement of Persons in 1999 as well as Cyprus and Malta.

**EU-8:** States that joined the EU in 2004, namely: Estonia, Hungary, Latvia, Lithuania, Poland, the Czech Republic, Slovenia and Slovakia.

**EU-2:** Romania and Bulgaria, which joined the EU in January 2009 and for which the Agreement on Free Movement of Persons entered into force on June 1<sup>st</sup> 2009.

**Visa:** Document issued by a Swiss Embassy and allowing entry into Switzerland. It should not be confused with the work and residence permit which allows a person to work or stay in Switzerland.

**Schengen area:** area formed by the territory of states that have implemented in full the Schengen Agreement. The Schengen countries have a common practice policy on visas. The UK is not part of this Agreement.

**Agreement on the Free Movement of Persons:** Agreement concluded between Switzerland and the EU completed by Protocols I and II extending the agreement to the Member States of the EU-8 and EU-2. Its goal is to facilitate the conditions for work and residence permits for the EU citizens.

These concepts having been clarified, we will now address the questions we have often faced in practice in connection with work and/or residence permits in Switzerland.

**1. A Hungarian company would like to second an employee to Switzerland for three months. Does the company need to apply for a work permit for this employee?**

Usually not. In this case, because the company has its registered office in a Member State of the European Union and the provision of services lasts only the Agreement on the Free Movement

of Persons applies. Under this Agreement, provision of services up to three months is not subject to authorization but to the announcement process. The announcement can be made through a form available on the website of the Federal Office for Migration and may be completed and submitted online.

It must, however, be specified that Hungary is part of the EU-8 and is therefore subject to the transitional period of the Agreement on the Free Movement of Persons until April 30, 2011. This period requires, service providers in some sectors, to obtain an authorization instead of going through the announcement process. These sectors include construction, civil engineering and finishing, services related to culture and landscape management, industrial cleaning, as well as security and supervision.

**2. A French company would like to second a computer scientist to Switzerland for three days; does it have to make an announcement to the authorities?**

No. The only persons that have to register from the first day are EU-17 nationals taking up employment in Switzerland with a Swiss employer and workers seconded by companies from the EU-17 employed in the following areas: construction, civil engineering and finishing, catering, industrial cleaning, supervision and security and itinerant merchants. In other economic sectors, only the persons employed in Switzerland for more than eight days during a calendar year have to make an announcement.



**3. Can a German national seconded by its German employer to a Swiss company for one year benefit from the facilitated conditions provided by the Agreement on the Free Movement of Persons?**

No, because this is considered as a provision of services and the Agreement on Free Movement of Persons applies to workers seconded by an employer whose residence or seat is in an EU/EFTA State, only if the provision of services does not exceed three months. In the present case, since the secondment shall last more than three months, the rules and requirements are the same as for workers seconded by an employer from a third state. Therefore, a complete and justified permit application must be filed with the cantonal authorities of the labor market before arrival in Switzerland and the start of work.

**4. Can a company whose registered office is in Austria second to Switzerland for 3 months a Brazilian employee who has been working for the company for one year by proceeding with the announcement as provided by the Agreement on the Free Movement of Persons?**

Yes. Indeed, the Agreement on the Free Movement of Persons applies to workers seconded by an employer with its seat or domicile in an EU/EFTA Member State, regardless of the nationality of the worker. However, the worker must have been sustainably integrated into the regular labor market of an EU/EFTA Member State. This means that the worker must have been employed for at least 12 months by a company whose headquar-

ters are located in an EU/EFTA Member State to benefit from easier conditions provided in the Agreement on the Free Movement of Persons.

**5. Is a Bulgarian national who concluded an employment agreement with a Swiss company certain to obtain an authorization to come and work in Switzerland?**

Unlike EU-17 nationals who benefit from a full right to free movement, EU-8 and EU-2 citizens are subject to a transitional regime which provides certain restrictions on the admission for the exercise of a professional activity. Their admission presupposes respect of the principle of priority of the local employment market (Swiss and foreign employees who are already on the Swiss labor market), the regulation for salary and working conditions and compliance with quotas. It is therefore necessary to file a complete and justified application with the competent authorities responsible for the employment market before arrival in Switzerland and the start of employment. For Romania and Bulgaria, the transitional regime may be extended until May 31, 2016 at the latest.

**6. A Swiss company would like to hire a Dutch national for an indefinite period of time, how shall the company proceed?**

The EU-17 employees shall hand over the required documents for the work permit (notably, copy of passport, passport photos and employment contract) either to the competent cantonal authority directly or at the Commune when registering their

arrival. The registration at the Commune shall be made within 8 days upon arrival in Switzerland. If the documents were handed over to the Commune, it will then transfer the documents to the competent cantonal authority for the issuance of the work permit.

**7. Is the American Manager of an international company that should come to work for a Swiss group company for one year also subject to the same conditions as the non-EU citizens coming to work in Switzerland?**

No. The intra-group transfer of senior managers or highly skilled workers engaged in the economy or the search for international companies is subject to a simplified procedure. Indeed, the principle of priority of the national and EU workers do not apply to them. The persons concerned are the leaders and employees assuming important responsibilities with decision-making power within the company and executives whose transfer within a transnational group is essential.

**8. How shall the employee proceed with regard to the announcement at the Commune if he doesn't have a residence in Switzerland, yet?**

The work and/or residence permit is not issued as long as the person is not registered at the Commune. It is therefore important to make this announcement as soon as possible. If the person is unable to submit a lease contract for the registration, it is possible to register at the Commune on the basis of a hotel registration form. Once



the person finds housing, he can then announce, if necessary, that he has left the Commune and register at his new Commune where he/she is resident.

**9. A Mexican national has to come to Switzerland to attend meetings, take part in interviews. Does he need a visa?**

No, Mexican nationals coming to Switzerland on a business trip for a maximum of three months do not need a visa. Stays as a tourist or for business trips that can last up to a maximum of three months have to be distinguished from stays for the exercise of a professional activity. Persons staying in Switzerland as tourists or for business trips (participation in seminars, training, interviews, etc.) do not always need a visa. Nevertheless, the majority of Third States nationals who come to Switzerland to work must obtain a visa. To determine whether a visa is required, it is recommended to consult the list of requirements for travel documents and visas issued by the Federal Office for Migration.

For those who have to be in possession of a visa, it is advisable, in order to optimize the duration of the procedure, to file simultaneously the permit application in Switzerland and the visa application at the Swiss Embassy abroad. The visa application must be filed at the Swiss embassy closest to the residence of the person concerned.

**10. Does a Russian national that has a residence permit delivered by Great Britain need a visa to enter Switzerland?**

Yes. Persons with residence permits issued by Great Britain, Ireland and Canada as well as the U.S. Green Card are no longer allowed to enter Switzerland without a visa. Since the entry of Swit-

zerland in Schengen, only foreigners holding residence permits issued by Schengen countries are allowed to enter Switzerland without a visa.

**11. Does the Vietnamese wife of a German national need a visa to come to Switzerland with her husband who will work in Switzerland?**

Yes. The agreement on the Free Movement of Persons gives to family members of an EU national having a right of residence, the right to settle with him in Switzerland and obtain a residence permit. However, it doesn't give a right of entry into Switzerland to family members who are not nationals of a Member State. As a consequence, they may have the obligation to apply for a visa to enter Switzerland.

**12. Is the Canadian wife of a Canadian national holding a B permit in Switzerland allowed to have a professional activity?**

Yes, the foreign spouse of a Swiss citizen or holder of a B or C permit and their foreign children can exercise a professional activity throughout Switzerland. They can start working without the need to undergo an authorization procedure. Nevertheless, the professional activity shall be announced to the immigration authorities.

**13. Can a Polish national cohabiting with her Polish partner who obtained an authorization to work in Switzerland accompany him and obtain a residence permit?**

Possibly. An EU national who does not exercise a professional activity may obtain a residence permit if he proves that he has the financial means so that he does not have to rely on social security

during his stay and a health insurance covering all risks. The cohabitant who has a professional activity may therefore, subject to providing evidence of ongoing life together, complete a declaration of financial support and allow his partner to provide proof of sufficient funds.

**14. Does a Mexican national holding a C permit lose it if the company employing him sends him on a temporary posting of one year abroad?**

Not if the employee makes a request to maintain the authorization. In principle, all permits expire when the person announces his departure at the Commune. If he does not announce it, B and C permits automatically expire after six months of stay outside of Switzerland. Where a person remains abroad for more than six months and upon request of the person concerned within these six months, a C permit can be maintained for a maximum of four years. However, it can be maintained only if the person has the intention to return to Switzerland within a period of 4 years. This applies to stays which by their nature are temporary, such as military service, training stays and secondments on behalf of a Swiss employer. A statement of establishment is given to the person to allow him to recover his C permit upon his return, provided that it occurs within the time limit.

In this case, a posting of one year abroad would justify that the authorities accept that the C permit be maintained during the stay abroad.

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