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RELOCATION TO SWITZERLAND

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Need for a permit to stay in Switzerland

A foreigner (a national of a country other than Switzerland) who wishes to stay in Switzerland on a long-term basis must have a valid permit issued by the local authorities. Sporadic or short-term presence (less than three months) does not require a permit; however, a visa (also for presence of less than three months) is required for nationals from certain states (non-Schengen states) or who enter Switzerland for certain purposes.

The most common permits for obtaining the right to establish oneself permanently in Switzerland (i.e. for more than one year) are the residence permit ("**B permit**") and the settlement permit ("**C permit**"). There are other types of permit, which are not discussed by this contribution, which serve other purposes than to establish a right of permanent residence (e.g. a permit granted to a frontier worker or a short-term residence permit).

Permit B

This title allows foreign nationals who intend to settle in Switzerland for the first time for at least one year, whether they intend to take up gainful employment in Switzerland or not. If you intend to reside in Switzerland for less than a year, but for at least 90 days, you can apply for another type of permit (Permit L). Permit B is a fixed-term permit, but can be renewed several times.

Permit C

This title allows a foreign national who already resides in Switzerland (often by virtue of the prior granting of a B permit) to have a permanent residence in Switzerland. Permit C gives you the right to establish yourself in Switzerland without restrictions or conditions. This permit is the title that gives the most advantageous migratory status to a foreign citizen. It can therefore be said that a foreign citizen holding a C permit has, in many ways, the same rights as a Swiss citizen (a sort of "our own without a Swiss passport").

EU/EFTA nationals and nationals of "third States".

The procedure for issuing one of these permits finds its fundamental watershed in the country of origin of the foreign citizen who applies for a permit, it must be distinguished between:

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- Citizens from an EU/EFTA states (European Union or European Free Trade Area); they can enjoy more favourable and less restrictive conditions for obtaining a permit, especially since they are covered by the Agreement between the Swiss Confederation and the European Community and its Member States on the free movement of persons (LAC).
 - Citizens from other countries (e.g. USA, Russia, Canada, China, India, etc.)

PROCEDURE AND CONDITIONS FOR ISSUING A PERMIT B

Preliminary

The conditions and procedure for obtaining a B permit are set out below, which as mentioned is often the first migratory title that a foreign citizen can apply for in order to reside (live) in Switzerland for at least one year.

Once in possession of this type of permit it is easier to obtain another type of permit (often a C permit).

If the purpose of the foreign national is not to reside in Switzerland (for example, a frontier worker who only wishes to work in Switzerland without living there) or if the purpose is to reside there for less than a year, it is advisable to go to other types of migratory permits.

Preventive application for a B permit

For the issue of a B permit, which, as mentioned above, is the first permit that a foreigner (whether an EU/EFTA citizen or a third country national) can aspire to, wishing to make Switzerland his or her place of permanent residence for the first time, must submit an application using a special form.

Foreign citizens who need a visa to enter Switzerland (e.g. citizens from a state that is not part of the Schengen area) must submit their application to the Swiss embassy in their country. On the other hand, citizens who do not need a visa to enter Switzerland can submit their application within 90 days of entering Switzerland directly to the place where they intend to reside (it is therefore not permitted to apply for a permit to reside in the Canton of Zurich in the Canton of Berne).

Reason for the stay

A B permit may be requested for the following purposes:

- To be gainfully employed in Switzerland
- To reside as an income or without gainful employment
- To join the family, which is already present in Switzerland
- For studying purposes
- For medical treatments

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- For serious reasons (e.g. humanitarian reasons)

Conditions for issuing a permit B

As mentioned above, EU/EFTA nationals can benefit from more favourable conditions for obtaining a residence permit (Permit B) under the Agreement on the Free Movement of Persons (ALC).

The following EU/EFTA nationals have the right to obtain this permit:

- Employees working in Switzerland, provided that the employment contract lasts more than one year.
Individuals seeking employment have the right to reside in Switzerland for six months, provided they can prove that they have sufficient financial means to support themselves.
- Self-employed persons working in Switzerland.
- Persons who are not gainfully employed and who have sufficient means for themselves and their families.
Sufficient" financial means are deemed to be those that do not make the foreigner dependent on the public social system in Switzerland. It does not matter from what source these funds come from (for example, a third party may "guarantee" the foreigner).
- People who have lost their jobs if they were not unemployed for more than 12 months in the previous five years when they were already in Switzerland.
- Persons who have become disabled if they were in Switzerland for at least two years at the time of the occurrence of the disability.
- Pensioners, if they lived in Switzerland for three years before retirement and worked in Switzerland for at least one year.
- Family members of EU/EFTA nationals who have a valid migration qualification in Switzerland.
The husband or wife, as well as direct descendants who are under 21 years of age or whose livelihood is still covered by their parents or who are still in education.

EU/EFTA nationals are normally granted a fixed-term permit of five years.

The following non-EU/EFTA nationals have the right to obtain this permit

- Employees working in Switzerland, provided that the employment contract is for more than one year and that additional conditions are met.
In fact, only specialists, directors and managers or other persons who are highly qualified for a particular job can obtain a permit for this purpose.

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- Self-employed persons who work in Switzerland only if certain conditions are met.
 - Rentiers who have sufficient means for themselves and their families, only if certain conditions are met.
Only for foreign persons aged 55 or over, who have a special connection with Switzerland and who have sufficient financial resources to ensure their livelihood throughout their lives¹.
 - Students and trainees only if certain conditions are met.
 - Persons in need of medical treatment only if certain conditions are met.
 - Persons who prove that the conditions for admitting a "serious reason" are met (e.g. for humanitarian reasons)
 - Family members of Swiss citizens or of persons who hold a valid migration qualification to Switzerland.

As you can see, the conditions for obtaining a B permit for non-EU/EFTA nationals are much more restrictive. In fact, the only condition that is the same for both EU/EFTA nationals and non-EU/EFTA nationals is the family reunification.

It should also be noted that the issue of a B permit for gainful employment by non-EU/EFTA nationals is subject to annual quotas (maximum number). Furthermore, a foreigner may only be admitted to Switzerland for gainful employment if it is proven that it is not possible to find an indigenous worker or a national of a state with which a free movement of persons agreement has been concluded that corresponds to the required profile (exception: a foreigner with a Swiss university degree may be admitted to Switzerland if his gainful employment is of high scientific or economic interest).

Nationals of third countries are normally granted a fixed-term permit of one year.

Loss of the right to reside in Switzerland

The foreign individual may voluntarily renounce the B permit (or other permits), for example by registering for a permanent departure abroad.

The B permit is lost if the foreign national stays abroad continuously for three months (for six months in the case of a C permit).

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¹ *In case one or all of the above mentioned compulsory criteria are not met accomplished, the foreign national has the option to apply for a residence permit if he/she can be considered of high economical public interest (Art 30 AuG). Article 32 VZAE defines inter alia the "important cantonal interest from a fiscal point of view" as high economical public interest. Canton Ticino has defined a minimum taxable income of CHF 750'000.*

In our Law and Notary Office we often deal with issues in the area of migration law. If desired, a free, non-binding first meeting can be organized, during which the situation will be analyzed and the client will be given an indication of the best procedure to follow.

The contents of this writing are not intended as an expression of opinion, but are for information purposes only. Readers wishing to use this information should consult a professional.