

# NEWS

## WORK PERMIT FOR THIRD-COUNTRY NATIONALS: SIMPLIFIED CONDITIONS FOR PROFESSIONS FACING MANPOWER SHORTAGE

Under Swiss law, general provisions regarding immigration for third-country nationals (i.e. non-EU/EFTA nationals) are provided by the Federal Act on Foreign Nationals and Integration ("FNA") and its related Ordinance on Admission, Period of Stay and Employment ("ASEO"). The FNA together with the ASEO define the strict conditions applicable to the granting of work and residence permits.

When the purpose of the stay in Switzerland is **to perform a dependent gainful activity**, art. 18 FNA provides that a third-country national may be admitted in Switzerland providing his/her admission is in the **economic interests** of the country and that the request is initiated by his/her employer. Additionally, the conditions provided by art. 20 to 25 FNA must be complied with, namely: the **quotas** as well as the **conditions of remuneration and work** applicable in the profession and in the region must be respected, the applicant must have **sufficient professional qualifications** and a **suitable accommodation** while in Switzerland.

Last but not least, the **priority order** as defined by art. 21 FNA must also be respected: when it comes to employment, the priority must be given to workers who are already authorized to work in Switzerland and to European workers. This condition is usually difficult to meet as it requires for the employer to demonstrate that no other qualified employee was found on the Swiss and European markets. Such demonstration typically implies advertising the position through various media, going through a full recruitment process and showing evidence that workforce research carried out both in Switzerland and in the European Union were unsuccessful. In other words, the employer must establish that the considered third-country nation-

**In its recent guidelines, the State Secretariat for Migration ("SEM") has encouraged the cantonal immigration authorities to demonstrate more flexibility when assessing the formal conditions to deliver work permits in professions facing manpower shortage.**

al has special skills and aptitudes that cannot be found locally, which makes the granting of such permit very restrictive.

Considering that some professions are currently facing an important shortage of manpower, the SEM recently confirmed that the cantonal immigration authorities can show flexibility when assessing whether the priority order is respected. The immigration authorities may waive the requirement to verify that research has been carried out locally when the employer alleges that the work permit application is made in a profession where there is a notorious manpower shortage.

At present, such manpower shortage is seen in:

- managers in the fields of information and communication technology, consulting, finance and insurance, machinery, electrical equipment and metallurgy, chemical and pharmaceutical production and food industry;
- engineers, scientists and researchers in the fields of mathematics, natural and technical sciences as well as information and communication specialists;
- medical specialists, assistants, specialized nursing staff (e.g. in surgical care, acute care and emergency care), radiology staff and
- teaching staff of universities.

This list is subject to joint and regular review by the SEM and the State Secretariat for Economic Affairs (SECO).

Despite the cantonal authorities still having a discretionary power when conducting the assess-

ment of the legal requirements for the granting of a work permit to third-country nationals, the recent guidelines provided by the SEM will undoubtedly facilitate the permit application process in the concerned fields and help Swiss employers meet their workforce needs.

*If you have any questions or need assistance, please do not hesitate to connect with your BianchiSchwald contact person.*

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